

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SENATE BILL 1499

AN ACT

AMENDING TITLE 14, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 14-1101, 14-1104, 14-1105 AND 14-1108; AMENDING SECTION 14-1201, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 3, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-3106; AMENDING SECTION 14-5101, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 14-5109 AND 14-5110; AMENDING SECTIONS 14-5303, 14-5304, 14-5306, 14-5307, 14-5308, 14-5309, 14-5311, 14-5312.01, 14-5313, 14-5314, 14-5315, 14-5404, 14-5405, 14-5407, 14-5410 AND 14-5414, ARIZONA REVISED STATUTES; REPEALING SECTION 14-5415, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 14-5415; AMENDING SECTION 14-5418, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-5418.01; AMENDING SECTIONS 14-5419 AND 14-5652, ARIZONA REVISED STATUTES; RELATING TO PROBATE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 14, chapter 1, article 1, Arizona Revised Statutes,
3 is amended by adding sections 14-1101, 14-1104, 14-1105 and 14-1108, to read:

4 14-1101. Training

5 A JUDICIAL OFFICER PRESIDING OVER PROCEEDINGS BROUGHT PURSUANT TO THIS
6 TITLE MUST PARTICIPATE IN TRAINING AS PRESCRIBED BY THE SUPREME COURT.

7 14-1104. Prudent management of costs

8 IN A PROCEEDING BROUGHT PURSUANT TO THIS TITLE:

9 1. THE FIDUCIARY MUST PRUDENTLY MANAGE COSTS AND PROTECT AGAINST
10 INCURRING ANY COSTS THAT EXCEED PROBABLE BENEFITS TO THE WARD, PROTECTED
11 PERSON, DECEDENT'S ESTATE OR TRUST, EXCEPT AS OTHERWISE DIRECTED BY A
12 GOVERNING INSTRUMENT OR COURT ORDER. A GUARDIAN AD LITEM, FIDUCIARY,
13 FIDUCIARY'S ATTORNEY AND ATTORNEY FOR THE WARD OR PROTECTED PERSON HAVE A
14 DUTY TO:

15 (a) ACT IN THE BEST INTEREST OF THE WARD OR PROTECTED PERSON AND THE
16 PERSON'S ESTATE.

17 (b) AVOID ENGAGING IN EXCESSIVE OR UNPRODUCTIVE ACTIVITIES.

18 (c) PRESERVE THE ASSETS OF THE WARD OR PROTECTED PERSON AND THE
19 PERSON'S ESTATE.

20 (d) AFFIRMATIVELY ASSESS THE FINANCIAL COST OF PURSUING ANY ACTION
21 COMPARED TO THE REASONABLY EXPECTED BENEFIT TO THE WARD OR PROTECTED PERSON
22 AND THE PERSON'S ESTATE.

23 2. THE GUARDIAN AD LITEM, FIDUCIARY, FIDUCIARY'S ATTORNEY, ATTORNEY
24 FOR THE WARD OR PROTECTED PERSON MUST TIMELY DISCLOSE TO THE COURT AND ALL
25 PERSONS ENTITLED TO NOTICE IF THE PERSON HAS A REASONABLE BELIEF THAT
26 PROJECTED COSTS OF COMPLYING WITH A COURT ORDER MAY EXCEED THE PROBABLE
27 BENEFITS TO THE WARD, PROTECTED PERSON, DECEDENT'S ESTATE OR TRUST. IF
28 APPROPRIATE, CONSISTENT WITH DUE PROCESS, THE COURT SHALL ENTER OR MODIFY THE
29 ORDERS AS MAY PROTECT OR FURTHER THE BEST INTEREST OF THE WARD, PROTECTED
30 PERSON, DECEDENT'S ESTATE OR TRUST AGAINST PROJECTED COSTS THAT EXCEED
31 PROBABLE BENEFITS.

32 3. MARKET RATES FOR GOODS AND SERVICES ARE A PROPER, ONGOING
33 CONSIDERATION FOR THE FIDUCIARY AND THE COURT DURING THE INITIAL COURT
34 APPOINTMENT OF A FIDUCIARY OR ATTORNEY, A HEARING ON A BUDGET OBJECTION AND A
35 REQUEST TO SUBSTITUTE A COURT-APPOINTED FIDUCIARY OR ATTORNEY. AT ANY STAGE
36 OF THE PROCEEDINGS, THE COURT MAY ORDER THAT COMPETITIVE BIDS FOR GOODS OR
37 SERVICES BE OBTAINED.

38 14-1105. Remedies for unreasonable or abusive conduct;
39 definitions

40 A. IF THE COURT FINDS THAT A DECEDENT'S ESTATE OR TRUST HAS INCURRED
41 PROFESSIONAL FEES OR EXPENSES AS A RESULT OF UNREASONABLE CONDUCT, THE COURT
42 SHALL ORDER THE PERSON WHO ENGAGED IN THE CONDUCT OR THE PERSON'S ATTORNEY,
43 OR BOTH, TO PAY THE DECEDENT'S ESTATE OR TRUST FOR SOME OR ALL OF THE FEES
44 AND EXPENSES AS THE COURT DEEMS JUST UNDER THE CIRCUMSTANCES.

1 B. IN A GUARDIANSHIP OR CONSERVATORSHIP CASE, IF THE COURT FINDS THAT
2 A WARD OR PROTECTED PERSON HAS INCURRED PROFESSIONAL FEES OR EXPENSES AS A
3 RESULT OF UNREASONABLE CONDUCT, THE COURT SHALL ORDER THE PERSON WHO ENGAGED
4 IN THE CONDUCT OR THE PERSON'S ATTORNEY, OR BOTH, TO PAY THE WARD OR
5 PROTECTED PERSON FOR SOME OR ALL OF THE FEES AND EXPENSES AS THE COURT DEEMS
6 JUST UNDER THE CIRCUMSTANCES. IF THE COURT FINDS THE PERSON ENGAGED IN
7 VEXATIOUS CONDUCT, THE COURT MAY ALSO DO EITHER OR BOTH OF THE FOLLOWING:

8 1. ORDER THAT THE PERSON IS NO LONGER ENTITLED TO NOTICE OF, AND MAY
9 NOT PARTICIPATE AS A PARTY IN, ANY FUTURE PROCEEDINGS CONCERNING THE WARD OR
10 PROTECTED PERSON BROUGHT PURSUANT TO THIS TITLE.

11 2. ORDER THAT THE WARD'S OR PROTECTED PERSON'S FIDUCIARY, FIDUCIARY'S
12 ATTORNEY, COURT-APPOINTED ATTORNEY OR GUARDIAN AD LITEM DOES NOT HAVE A DUTY
13 TO RESPOND TO FUTURE REQUESTS MADE BY THE PERSON FOR INFORMATION CONCERNING
14 THE WARD OR PROTECTED PERSON AND TO FUTURE COURT FILINGS MADE BY THE
15 FIDUCIARY, FIDUCIARY'S ATTORNEY, COURT-APPOINTED ATTORNEY OR GUARDIAN AD
16 LITEM, UNLESS EXPLICITLY ORDERED BY THE COURT.

17 C. BEFORE MAKING A REQUEST FOR A REMEDY PURSUANT TO THIS SECTION, A
18 PARTY MUST NOTIFY THE OFFENDING PARTY IN WRITING OF THE PARTY'S INTENT TO
19 SEEK THE REMEDY IF THE OFFENDING CONDUCT IS NOT TERMINATED WITHIN A
20 REASONABLE TIME.

21 D. THE REMEDIES PERMITTED PURSUANT TO THIS SECTION ARE IN ADDITION TO
22 ANY OTHER CIVIL REMEDY OR ANY OTHER PROVISION OF LAW. THE REMEDIES PERMITTED
23 PURSUANT TO THIS SECTION MAY BE INVOKED TO MITIGATE THE FINANCIAL BURDEN ON A
24 WARD, PROTECTED PERSON, DECEDENT'S ESTATE OR TRUST INCURRED AS A RESULT OF
25 UNJUSTIFIED COURT PROCEEDINGS OR UNREASONABLE OR EXCESSIVE DEMANDS MADE ON A
26 FIDUCIARY, FIDUCIARY'S ATTORNEY, COURT-APPOINTED ATTORNEY OR REPRESENTATIVE.

27 E. FOR THE PURPOSES OF THIS SECTION:

28 1. "COURT-APPOINTED ATTORNEY" MEANS AN ATTORNEY APPOINTED PURSUANT TO
29 SECTION 14-5303, SUBSECTION C, SECTION 14-5310, SUBSECTION C, SECTION
30 14-5401.01, SUBSECTION C OR SECTION 14-5407, SUBSECTION B.

31 2. "FIDUCIARY" MEANS AN AGENT UNDER A DURABLE POWER OF ATTORNEY, AN
32 AGENT UNDER A HEALTH CARE POWER OF ATTORNEY, A GUARDIAN, A CONSERVATOR, A
33 PERSONAL REPRESENTATIVE, A TRUSTEE OR A GUARDIAN AD LITEM.

34 3. "PERSON WHO ENGAGED IN THE CONDUCT" INCLUDES A FIDUCIARY, AN
35 ATTORNEY OR A GUARDIAN AD LITEM.

36 4. "PROFESSIONAL" MEANS AN ACCOUNTANT, AN ATTORNEY, A FIDUCIARY, A
37 PHYSICIAN, A PSYCHOLOGIST, A REGISTERED NURSE, A GUARDIAN AD LITEM OR AN
38 EXPERT WITNESS.

39 5. "PROFESSIONAL FEES OR EXPENSES" INCLUDES THE FIDUCIARY'S FEES AND
40 EXPENSES AND THE FIDUCIARY'S ATTORNEY FEES AND EXPENSES, AS WELL AS THE FEES
41 AND EXPENSES OF ANY OTHER PROFESSIONALS HIRED BY THE FIDUCIARY OR THE
42 FIDUCIARY'S ATTORNEY.

43 6. "VEXATIOUS CONDUCT":

44 (a) INCLUDES:

45 (i) LITIGATION SOLELY OR PRIMARILY FOR THE PURPOSE OF HARASSMENT.

1 (ii) LITIGATION SOLELY OR PRIMARILY TO FURTHER THE PERSON'S OWN
2 INTERESTS RATHER THAN THE INTERESTS OF THE WARD OR PROTECTED PERSON.

3 (iii) UNREASONABLY EXPANDING OR DELAYING COURT PROCEEDINGS.

4 (iv) COURT ACTIONS BROUGHT OR DEFENDED WITHOUT SUBSTANTIAL
5 JUSTIFICATION.

6 (v) ENGAGING IN ABUSE OF DISCOVERY.

7 (vi) A PATTERN OF MAKING UNREASONABLE OR EXCESSIVE REQUESTS FOR
8 INFORMATION FROM A WARD'S OR A PROTECTED PERSON'S FIDUCIARY, COURT-APPOINTED
9 ATTORNEY OR GUARDIAN AD LITEM.

10 (b) DOES NOT INCLUDE:

11 (i) A PROCEEDING BROUGHT BY OR ON BEHALF OF THE WARD OR PROTECTED
12 PERSON AGAINST ANOTHER PERSON WHEN THE OTHER PERSON DEFENDS THE CLAIM IN GOOD
13 FAITH.

14 (ii) A PROCEEDING BROUGHT IN GOOD FAITH BY A PERSON AGAINST A WARD OR
15 PROTECTED PERSON TO ESTABLISH A CLAIM AGAINST THE WARD OR PROTECTED PERSON.

16 (iii) A PROCEEDING BROUGHT IN GOOD FAITH BY OR AGAINST THE WARD'S OR
17 THE PROTECTED PERSON'S FIDUCIARY OR COURT-APPOINTED ATTORNEY, INCLUDING A
18 PROCEEDING TO ESTABLISH THE FIDUCIARY'S OR THE COURT-APPOINTED ATTORNEY'S
19 LIABILITY TO THE WARD OR PROTECTED PERSON OR ENTITLEMENT TO COMPENSATION.

20 14-1108. Arbitration of disputes; alternative dispute
21 resolution

22 IN A PROCEEDING BROUGHT PURSUANT TO THIS TITLE, AFTER THE INITIAL
23 APPOINTMENT OF A FIDUCIARY, THE COURT MAY REQUIRE ARBITRATION OF A DISPUTE
24 PURSUANT TO THE REQUIREMENTS OF SECTION 12-133, SUBSECTIONS B THROUGH K, OR
25 ORDER ALTERNATIVE DISPUTE RESOLUTION.

26 Sec. 2. Section 14-1201, Arizona Revised Statutes, is amended to read:
27 14-1201. Definitions

28 In this title, unless the context otherwise requires:

29 1. "Agent" includes an attorney-in-fact under a durable or nondurable
30 power of attorney, a person who is authorized to make decisions concerning
31 another person's health care and a person who is authorized to make decisions
32 for another person under a natural death act.

33 2. "Application" means a written request to the registrar for an order
34 of informal probate or appointment under chapter 3, article 3 of this title.

35 3. "BASIS FOR COMPENSATION" MEANS HOURLY RATE, A FIXED FEE OR A
36 CONTINGENCY FEE AGREEMENT AND REIMBURSABLE COSTS.

37 ~~3-~~ 4. "Beneficiary", as it relates to a trust beneficiary, includes a
38 person who has any present or future interest, vested or contingent, and also
39 includes the owner of an interest by assignment or other transfer. As it
40 relates to a charitable trust, beneficiary includes any person entitled to
41 enforce the trust. As it relates to a beneficiary of a beneficiary
42 designation, beneficiary refers to a beneficiary of an insurance or annuity
43 policy, an account with pay on death designation, a security registered in
44 beneficiary form or a pension, profit sharing, retirement or similar benefit
45 plan, or any other nonprobate transfer at death. As it relates to a

1 beneficiary designated in a governing instrument, beneficiary includes a
2 grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a
3 beneficiary designation, a donee, appointee or taker in default of a power of
4 appointment and a person in whose favor a power of attorney or a power held
5 in any person, fiduciary or representative capacity is exercised.

6 ~~4-~~ 5. "Beneficiary designation" refers to a governing instrument
7 naming a beneficiary of an insurance or annuity policy, of an account with
8 pay on death designation, of a security registered in beneficiary form or of
9 a pension, profit sharing, retirement or similar benefit plan, or any other
10 nonprobate transfer at death.

11 ~~5-~~ 6. "Child" includes a person who is entitled to take as a child
12 under this title by intestate succession from the parent whose relationship
13 is involved. Child excludes a person who is only a stepchild, a foster
14 child, a grandchild or a more remote descendant.

15 ~~6-~~ 7. "Claims", in respect to estates of decedents and protected
16 persons, includes liabilities of the decedent or the protected person,
17 whether arising in contract, in tort or otherwise, and liabilities of the
18 estate that arise at or after the death of the decedent or after the
19 appointment of a conservator, including funeral expenses and expenses of
20 administration. Claims do not include estate or inheritance taxes or demands
21 or disputes regarding title of a decedent or a protected person to specific
22 assets alleged to be included in the estate.

23 ~~7-~~ 8. "Community property" means that property of a husband and wife
24 that is acquired during the marriage and that is community property as
25 prescribed in section 25-211.

26 ~~8-~~ 9. "Conservator" means a person who is appointed by a court to
27 manage the estate of a protected person.

28 ~~9-~~ 10. "Court" means the superior court.

29 ~~10-~~ 11. "Dependent child" means a minor child who WHOM the decedent
30 was obligated to support or an adult child who was in fact being supported by
31 the decedent at the time of the decedent's death.

32 ~~11-~~ 12. "Descendant" means all of the decedent's descendants of all
33 generations, with the relationship of parent and child at each generation.

34 ~~12-~~ 13. "Devise", when used as a noun, means a testamentary
35 disposition of real or personal property and, when used as a verb, means to
36 dispose of real or personal property by will.

37 ~~13-~~ 14. "Devisee" means a person designated in a will to receive a
38 devise. For the purposes of chapter 3 of this title, in the case of a devise
39 to an existing trust or trustee, or to a trustee on trust described by will,
40 the trust or trustee is the devisee and the beneficiaries are not devisees.

41 ~~14-~~ 15. "Disability" means cause for a protective order as described
42 in section 14-5401.

43 16. "DISCRETIONARY CARE" MEANS ALL GOODS AND SERVICES PROVIDED TO A
44 WARD OR PROTECTED PERSON THAT ARE NOT ESSENTIAL FOR SURVIVAL BUT ARE DESIGNED
45 TO IMPROVE OR PROLONG THE QUALITY AND ENJOYMENT OF LIFE FOR THE WARD OR

1 PROTECTED PERSON. DISCRETIONARY CARE DOES NOT INCLUDE ITEMS SUCH AS HOUSING,
2 UTILITIES, PERSONAL HYGIENE, MEDICAL OR DENTAL TREATMENT, MEDICATION, FOOD,
3 TRANSPORTATION, INSURANCE AND TAXES.

4 ~~15-~~ 17. "Distributee" means any person who has received property of a
5 decedent from that person's personal representative other than as a creditor
6 or purchaser. Distributee includes a testamentary trustee only to the extent
7 of distributed assets or increment that remains in that person's hands. A
8 beneficiary of a testamentary trust to whom the trustee has distributed
9 property received from a personal representative is a distributee of the
10 personal representative. For the purposes of this paragraph, "testamentary
11 trustee" includes a trustee to whom assets are transferred by will, to the
12 extent of the devised assets.

13 ~~16-~~ 18. "Estate" includes the property of the decedent, trust or other
14 person whose affairs are subject to this title as originally constituted and
15 as it exists from time to time during administration. As it relates to a
16 spouse, the estate includes only the separate property and the share of the
17 community property belonging to the decedent or person whose affairs are
18 subject to this title.

19 ~~17-~~ 19. "Exempt property" means that property of a decedent's estate
20 that is described in section 14-2403.

21 ~~18-~~ 20. "Fiduciary" includes a personal representative, guardian,
22 conservator and trustee.

23 ~~19-~~ 21. "Foreign personal representative" means a personal
24 representative appointed by another jurisdiction.

25 ~~20-~~ 22. "Formal proceedings" means proceedings conducted before a
26 judge with notice to interested persons.

27 ~~21-~~ 23. "Governing instrument" means a deed, will, trust, insurance or
28 annuity policy, account with pay on death designation, security registered in
29 beneficiary form, pension, profit sharing, retirement or similar benefit
30 plan, instrument creating or exercising a power of appointment or a power of
31 attorney or a dispositive, appointive or nominative instrument of any similar
32 type.

33 ~~22-~~ 24. "Guardian" means a person who has qualified as a guardian of a
34 minor or incapacitated person pursuant to testamentary or court appointment
35 but excludes a person who is merely a guardian ad litem.

36 25. "GUARDIAN AD LITEM" INCLUDES A PERSON WHO IS APPOINTED PURSUANT TO
37 SECTION 14-1408.

38 ~~23-~~ 26. "Heirs", except as controlled by section 14-2711, means
39 persons, including the surviving spouse and the state, who are entitled under
40 the statutes of intestate succession to the property of a decedent.

41 ~~24-~~ 27. "Incapacitated person" has the same meaning prescribed in
42 section 14-5101.

43 ~~25-~~ 28. "Informal proceedings" means those proceedings conducted
44 without notice to interested persons by an officer of the court acting as a
45 registrar for probate of a will or appointment of a personal representative.

1 ~~26-~~ 29. "Interested person" includes any trustee, heir, devisee,
2 child, spouse, creditor, beneficiary, person holding a power of appointment
3 and other person who has a property right in or claim against a trust estate
4 or the estate of a decedent, ward or protected person. Interested person
5 also includes a person who has priority for appointment as personal
6 representative and other fiduciaries representing interested persons.
7 Interested person, as the term relates to particular persons, may vary from
8 time to time and must be determined according to the particular purposes of,
9 and matter involved in, any proceeding.

10 ~~27-~~ 30. "Issue" of a person means descendant as defined in this
11 section.

12 ~~28-~~ 31. "Joint tenants with the right of survivorship" and "community
13 property with the right of survivorship" includes co-owners of property held
14 under circumstances that entitle one or more to the whole of the property on
15 the death of the other or others but excludes forms of co-ownership
16 registration in which the underlying ownership of each party is in proportion
17 to that party's contribution.

18 ~~29-~~ 32. "Lease" includes any oil, gas or other mineral lease.

19 ~~30-~~ 33. "Letters" includes letters testamentary, letters of
20 guardianship, letters of administration and letters of conservatorship.

21 ~~31-~~ 34. "Minor" means a person who is under eighteen years of age.

22 ~~32-~~ 35. "Mortgage" means any conveyance, agreement or arrangement in
23 which property is encumbered or used as security. Mortgage does not include
24 leases or easements.

25 ~~33-~~ 36. "Nonresident decedent" means a decedent who was domiciled in
26 another jurisdiction at the time of the decedent's death.

27 ~~34-~~ 37. "Organization" means a corporation, limited liability company,
28 business trust, estate, trust, partnership, joint venture, association,
29 government or governmental subdivision or agency or any other legal or
30 commercial entity.

31 ~~35-~~ 38. "Parent" includes any person entitled to take, or who would be
32 entitled to take if the child died without a will, as a parent under this
33 title by intestate succession from the child whose relationship is in
34 question and excludes any person who is only a stepparent, foster parent or
35 grandparent.

36 ~~36-~~ 39. "Payor" means a trustee, insurer, business entity, employer,
37 government, governmental agency or subdivision or any other person who is
38 authorized or obligated by law or a governing instrument to make payments.

39 ~~37-~~ 40. "Person" means an individual or an organization.

40 ~~38-~~ 41. "Personal representative" includes executor, administrator,
41 successor personal representative, special administrator and persons who
42 perform substantially the same function under the law governing their status.
43 A general personal representative excludes a special administrator.

44 ~~39-~~ 42. "Petition" means a written request to the court for an order
45 after notice.

1 ~~40-~~ 43. "Proceeding" includes action at law and suit in equity.
2 ~~41-~~ 44. "Property" has the same meaning prescribed in section
3 14-10103.
4 ~~42-~~ 45. "Protected person" has the same meaning prescribed in section
5 14-5101.
6 ~~43-~~ 46. "Protective proceeding" has the same meaning prescribed in
7 section 14-5101.
8 ~~44-~~ 47. "Registrar" means the official of the court designated to
9 perform the functions of registrar as provided in section 14-1307.
10 ~~45-~~ 48. "Security" includes any note, stock, treasury stock, bond,
11 debenture, evidence of indebtedness, certificate of interest or participation
12 in an oil, gas or mining title or lease or in payments out of production
13 under that title or lease, collateral trust certificate, transferable share
14 or voting trust certificate and, in general, includes any interest or
15 instrument commonly known as a security, or any certificate of interest or
16 participation, any temporary or interim certificate, receipt or certificate
17 of deposit for, or any warrant or right to subscribe to or purchase, any of
18 these securities.
19 ~~46-~~ 49. "Separate property" means that property of a husband or wife
20 that is the spouse's separate property as defined in section 25-213.
21 ~~47-~~ 50. "Settlement", in reference to a decedent's estate, includes
22 the full process of administration, distribution and closing.
23 ~~48-~~ 51. "Special administrator" means a personal representative as
24 described by sections 14-3614 through 14-3618.
25 ~~49-~~ 52. "State" has the same meaning prescribed in section 14-10103.
26 ~~50-~~ 53. "Successor personal representative" means a personal
27 representative, other than a special administrator, who is appointed to
28 succeed a previously appointed personal representative.
29 ~~51-~~ 54. "Successors" means persons, other than creditors, who are
30 entitled to property of a decedent under a will or this title.
31 ~~52-~~ 55. "Supervised administration" refers to the proceedings
32 described in chapter 3, article 5 of this title.
33 ~~53-~~ 56. "Survive" means that a person has neither predeceased an
34 event, including the death of another person, nor is deemed to have
35 predeceased an event under section 14-2104 or 14-2702.
36 ~~54-~~ 57. "Testacy proceeding" means a proceeding to establish a will or
37 determine intestacy.
38 ~~55-~~ 58. "Testator" includes a person of either sex.
39 ~~56-~~ 59. "Trust" includes an express trust, private or charitable, with
40 any additions, wherever and however created. Trust also includes a trust
41 created or determined by judgment or decree under which the trust is to be
42 administered in the manner of an express trust. Trust excludes other
43 constructive trusts and excludes resulting trusts, conservatorship, personal
44 representatives, trust accounts, custodial arrangements pursuant to chapter
45 7, article 7 of this title, business trusts providing for certificates to be

1 issued to beneficiaries, common trust funds, voting trusts, security
2 arrangements, liquidation trusts and trusts for the primary purpose of paying
3 debts, dividends, interest, salaries, wages, profits, pensions or employee
4 benefits of any kind, trusts created by a city or town for the payment of
5 medical insurance, health care benefits or expenses, long-term or short-term
6 disability, self insurance reserves and similar programs administered by a
7 city or town, legal defense trusts and any arrangement under which a person
8 is nominee or escrowee for another.

9 ~~57-~~ 60. "Trustee" includes an original, additional or successor
10 trustee, whether or not appointed or confirmed by THE court.

11 ~~58-~~ 61. "Ward" has the same meaning prescribed in section 14-5101.

12 ~~59-~~ 62. "Will" includes a codicil and any testamentary instrument that
13 merely appoints an executor, revokes or revises another will, nominates a
14 guardian or expressly excludes or limits the right of an individual or class
15 to succeed to property of the decedent passing by intestate succession.

16 Sec. 3. Title 14, chapter 3, article 1, Arizona Revised Statutes, is
17 amended by adding section 14-3106, to read:

18 14-3106. Disclosure of compensation

19 A. WHEN A PERSONAL REPRESENTATIVE, AN ATTORNEY OR A GUARDIAN AD LITEM
20 WHO INTENDS TO SEEK COMPENSATION FROM THE DECEDENT'S ESTATE FIRST APPEARS IN
21 THE PROCEEDING, THAT PERSON MUST GIVE WRITTEN NOTICE OF THE BASIS OF THE
22 COMPENSATION BY FILING A STATEMENT WITH THE COURT AND PROVIDING A COPY OF
23 THAT STATEMENT TO ALL PARTIES AND TO ALL PERSONS WHO HAVE FILED A DEMAND FOR
24 NOTICE. THE STATEMENT MUST INCLUDE A GENERAL EXPLANATION OF THE COMPENSATION
25 ARRANGEMENT AND HOW THE COMPENSATION WILL BE COMPUTED.

26 B. IF DURING THE PENDENCY OF THE ACTION THE BASIS FOR COMPENSATION
27 CHANGES, THE PERSONAL REPRESENTATIVE, ATTORNEY OR GUARDIAN AD LITEM MUST
28 PROVIDE NOTICE OF THAT CHANGE TO ALL PERSONS ENTITLED TO NOTICE PURSUANT TO
29 THIS SECTION NOT LESS THAN THIRTY DAYS BEFORE THE CHANGE BECOMES EFFECTIVE.

30 Sec. 4. Section 14-5101, Arizona Revised Statutes, is amended to read:

31 14-5101. Definitions

32 In this title, unless the context otherwise requires:

33 1. "Incapacitated person" means any person who is impaired by reason
34 of mental illness, mental deficiency, mental disorder, physical illness or
35 disability, chronic use of drugs, chronic intoxication or other cause, except
36 minority, to the extent that he lacks sufficient understanding or capacity to
37 make or communicate responsible decisions concerning his person.

38 2. "Investigator" means a person who is appointed by the court under
39 section 14-5308.

40 3. "MEDICAL COSTS" MEANS THE COSTS OF MEDICAL SERVICES AND
41 PRESCRIPTIONS PROVIDED OR ORDERED BY MEDICAL CARE PRACTITIONERS, DENTAL CARE
42 PRACTITIONERS AND MEDICAL AND DENTAL FACILITIES. MEDICAL COSTS DOES NOT
43 INCLUDE ANY COSTS FOR SERVICES OF A FIDUCIARY, COMPANION OR OTHERS
44 NECESSITATED BY THE MEDICAL OR DENTAL CONDITION OF THE WARD OR PROTECTED
45 PERSON.

1 ~~3-~~ 4. "Physician" means a person licensed pursuant to title 32,
2 chapter 13 or 17.

3 ~~4-~~ 5. "Protected person" means a minor or any other person for whom a
4 conservator has been appointed or any other protective order has been made.

5 ~~5-~~ 6. "Protective proceeding" means a proceeding under the provisions
6 of section 14-5401 to determine that a person cannot effectively manage or
7 apply his estate to necessary ends, either because he lacks the ability or is
8 otherwise inconvenienced, or because he is a minor, and to secure
9 administration of his estate by a conservator or other appropriate relief.

10 ~~6-~~ 7. "Psychologist" means a person licensed pursuant to title 32,
11 chapter 19.1.

12 ~~7-~~ 8. "Registered nurse" has the same meaning as prescribed in
13 section 32-1601.

14 ~~8-~~ 9. "Ward" means a person for whom a guardian has been appointed.
15 "Minor ward" means a minor for whom a guardian has been appointed solely
16 because of minority.

17 Sec. 5. Title 14, chapter 5, article 1, Arizona Revised Statutes, is
18 amended by adding sections 14-5109 and 14-5110, to read:

19 14-5109. Disclosure of compensation; determining reasonableness
20 and necessity

21 A. WHEN A GUARDIAN, A CONSERVATOR, AN ATTORNEY OR A GUARDIAN AD LITEM
22 WHO INTENDS TO SEEK COMPENSATION FROM THE ESTATE OF A WARD OR PROTECTED
23 PERSON FIRST APPEARS IN THE PROCEEDING, THAT PERSON MUST GIVE WRITTEN NOTICE
24 OF THE BASIS OF THE COMPENSATION BY FILING A STATEMENT WITH THE COURT AND
25 PROVIDING A COPY OF THE STATEMENT TO ALL PERSONS ENTITLED TO NOTICE PURSUANT
26 TO SECTIONS 14-5309 AND 14-5405. THE STATEMENT MUST PROVIDE A GENERAL
27 EXPLANATION OF THE COMPENSATION ARRANGEMENT AND HOW THE COMPENSATION WILL BE
28 COMPUTED. IF DURING THE PENDENCY OF THE ACTION THE BASIS FOR COMPENSATION
29 CHANGES, THE GUARDIAN, CONSERVATOR, ATTORNEY OR GUARDIAN AD LITEM MUST
30 PROVIDE NOTICE OF THE CHANGE TO ALL PERSONS ENTITLED TO NOTICE PURSUANT TO
31 THIS SUBSECTION NOT LESS THAN THIRTY DAYS BEFORE THE CHANGE BECOMES
32 EFFECTIVE.

33 B. COMPENSATION PAID FROM AN ESTATE TO A GUARDIAN, CONSERVATOR,
34 ATTORNEY OR GUARDIAN AD LITEM MUST BE REASONABLE AND NECESSARY. TO DETERMINE
35 THE REASONABLENESS AND NECESSITY OF COMPENSATION, THE COURT MUST CONSIDER THE
36 BEST INTEREST OF THE WARD OR PROTECTED PERSON. THE FOLLOWING FACTORS MAY BE
37 CONSIDERED TO THE EXTENT APPLICABLE:

38 1. WHETHER THE SERVICES PROVIDED ANY BENEFIT OR ATTEMPTED TO ADVANCE
39 THE BEST INTEREST OF THE WARD, PROTECTED PERSON OR ESTATE.

40 2. THE USUAL AND CUSTOMARY FEES CHARGED IN THE RELEVANT PROFESSIONAL
41 COMMUNITY FOR THE SERVICES.

42 3. THE SIZE AND COMPOSITION OF THE ESTATE.

43 4. THE EXTENT THAT THE SERVICES WERE PROVIDED IN THE MOST EFFICIENT
44 AND COST-EFFECTIVE MANNER FEASIBLE.

45 5. WHETHER THERE WAS APPROPRIATE DELEGATION TO PARAPROFESSIONALS.

1 6. ANY OTHER FACTORS BEARING ON THE REASONABLENESS OF FEES.
2 C. THE PERSON SEEKING COMPENSATION HAS THE BURDEN OF PROVING THE
3 REASONABLENESS AND NECESSITY OF COMPENSATION AND EXPENSES SOUGHT.
4 14-5110. Claim deadline for compensation; definitions
5 A. IN A GUARDIANSHIP, CONSERVATORSHIP OR PROTECTIVE PROCEEDING, UNLESS
6 A LATER CLAIM DEADLINE IS ESTABLISHED IN ADVANCE BY THE COURT:
7 1. A CLAIM FOR COMPENSATION BY ATTORNEYS OR GUARDIANS AD LITEM WHO
8 INTEND TO BE PAID BY THE WARD OR PROTECTED PERSON'S ESTATE IS WAIVED IF NOT
9 SUBMITTED TO THE FIDUCIARY IN WRITING WITHIN FOUR MONTHS AFTER EITHER
10 RENDERING THE SERVICE, INCURRING THE COST, INITIAL APPOINTMENT OF THE
11 FIDUCIARY OR THE EFFECTIVE DATE OF THIS SECTION, WHICHEVER IS LATER. A CLAIM
12 IS DEEMED SUBMITTED ON DELIVERY, MAILING OR ELECTRONIC TRANSMISSION TO THE
13 FIDUCIARY. A SUBSEQUENT APPOINTMENT OF A SUBSTITUTE FIDUCIARY DOES NOT RENEW
14 THE CLAIM PERIOD.
15 2. A CLAIM FOR ACCRUED BUT UNPAID COMPENSATION INCURRED DURING A
16 REPORTING PERIOD BY THE GUARDIAN IS WAIVED IF NOT DISCLOSED IN THE GUARDIAN'S
17 REPORT, OR IN AN AMENDED REPORT FILED WITHIN THREE MONTHS AFTER THE DUE DATE
18 OF THE ANNUAL REPORT. AN AMENDMENT OF THE ANNUAL REPORT DOES NOT RENEW THE
19 CLAIM PERIOD. A CLAIM FOR ACCRUED BUT UNPAID COMPENSATION INCURRED BEFORE
20 THE EFFECTIVE DATE OF THIS SECTION MUST BE DISCLOSED NOT LATER THAN THE DUE
21 DATE FOR THE NEXT GUARDIAN'S REPORT AFTER THE EFFECTIVE DATE OF THIS SECTION
22 OR THE CLAIM IS WAIVED.
23 3. A CLAIM FOR ACCRUED BUT UNPAID COMPENSATION INCURRED DURING AN
24 ACCOUNTING PERIOD BY THE CONSERVATOR IS WAIVED IF NOT DISCLOSED IN THE
25 CONSERVATOR'S ACCOUNT, OR IN AN AMENDED ACCOUNT FILED WITHIN THREE MONTHS
26 AFTER THE DUE DATE OF THE ANNUAL ACCOUNT. AN AMENDMENT OF THE ANNUAL ACCOUNT
27 DOES NOT RENEW THE CLAIM PERIOD. A FIDUCIARY WHO IS BOTH A GUARDIAN AND
28 CONSERVATOR MUST REPORT A CLAIM FOR COMPENSATION AS REQUIRED BY A
29 CONSERVATOR. A CLAIM FOR ACCRUED BUT UNPAID COMPENSATION INCURRED BEFORE THE
30 EFFECTIVE DATE OF THIS SECTION MUST BE DISCLOSED NOT LATER THAN THE DUE DATE
31 FOR THE NEXT CONSERVATOR'S ACCOUNT AFTER THE EFFECTIVE DATE OF THIS SECTION
32 OR THE CLAIM IS WAIVED.
33 B. THIS SECTION DOES NOT APPLY TO AN ATTORNEY SEEKING COMPENSATION
34 BASED ON A CONTINGENCY FEE AGREEMENT.
35 C. FOR THE PURPOSES OF THIS SECTION:
36 1. "COMPENSATION" INCLUDES FEES, COSTS AND REIMBURSABLE EXPENSES.
37 2. "ESTATE" INCLUDES ANY ESTATE ESTABLISHED PURSUANT TO THIS TITLE
38 EXCEPT A TRUST UNLESS THE TRUST IS SUPERVISED BY THE COURT AND THE WARD OR
39 PROTECTED PERSON IS A BENEFICIARY.
40 Sec. 6. Section 14-5303, Arizona Revised Statutes, is amended to read:
41 14-5303. Procedure for court appointment of a guardian of an
42 alleged incapacitated person
43 A. The alleged incapacitated person or any person interested in that
44 person's affairs or welfare may petition for the appointment of a guardian or
45 for any other appropriate protective order.

1 B. The petition shall contain a statement that the authority granted
2 to the guardian may include the authority to withhold or withdraw life
3 sustaining treatment, including artificial food and fluid, and shall state,
4 to the extent known:

5 1. The interest of the petitioner.

6 2. The name, age, residence and address of the alleged incapacitated
7 person.

8 3. The name, address and priority for appointment of the person whose
9 appointment is sought.

10 4. The name and address of the conservator, if any, of the alleged
11 incapacitated person.

12 5. The name and address of the nearest relative of the alleged
13 incapacitated person known to the petitioner.

14 6. A general statement of the property of the alleged incapacitated
15 person, with an estimate of its value and including any compensation,
16 insurance, pension or allowance to which the person is entitled.

17 7. The reason why appointment of a guardian or any other protective
18 order is necessary.

19 8. The type of guardianship requested. If a general guardianship is
20 requested, the petition must state that other alternatives have been explored
21 and why a limited guardianship is not appropriate. If a limited guardianship
22 is requested, the petition also must state what specific powers are
23 requested.

24 9. UNLESS THE PROPOSED GUARDIAN IS A PUBLIC FIDUCIARY, A GOOD FAITH
25 ESTIMATE OF ALL PROJECTED MONTHLY COSTS ASSOCIATED WITH THE GUARDIANSHIP TO
26 BE PAID FROM THE WARD'S ESTATE AND OVER WHICH THE GUARDIAN WILL EXERCISE
27 CONTROL, EXCEPT MEDICAL COSTS AND TAXES, THAT WILL BE NECESSARY TO CARE FOR
28 THE WARD UNTIL THE FIRST GUARDIAN REPORT IS TIMELY FILED. THE PETITIONER IS
29 REQUIRED ONLY TO ESTIMATE THESE COSTS BASED ON THE INFORMATION REASONABLY
30 KNOWN AT THE TIME THE PETITION IS FILED, INCLUDING INFORMATION OBTAINED FROM
31 ANY GUARDIAN PROPOSED IN THE PETITION. THE PETITION MUST PROVIDE ESTIMATES
32 FOR THE FOLLOWING CATEGORIES OF COSTS:

33 (a) THE AVERAGE MONTHLY COST OF HOUSING AND CARE OF THE WARD.

34 (b) THE AVERAGE MONTHLY COST OF DISCRETIONARY CARE SERVICES FOR THE
35 WARD.

36 (c) THE AVERAGE MONTHLY FIDUCIARY FEES AND EXPENSES EXPECTED TO BE
37 INCURRED BY THE GUARDIAN.

38 (d) THE AMOUNT OF ATTORNEY FEES INCURRED AND EXPECTED TO BE INCURRED
39 BY ALL APPOINTED ATTORNEYS THROUGH THE ISSUANCE OF A COURT ORDER APPOINTING A
40 GUARDIAN AS REQUESTED IN THE PETITION.

41 (e) THE AVERAGE MONTHLY ATTORNEY FEES AND EXPENSES EXPECTED TO BE
42 INCURRED BY ALL APPOINTED ATTORNEYS UNTIL SUBMISSION OF THE FIRST GUARDIAN
43 REPORT.

1 (f) THE AVERAGE MONTHLY COSTS OF ALL OTHER COSTS OR EXPENSES NOT
2 LISTED IN SUBDIVISIONS (a) THROUGH (e) AND OVER WHICH THE PROPOSED GUARDIAN
3 WILL EXERCISE CONTROL WITH AN EXPLANATION OF THE REQUESTED COST OR EXPENSE.

4 10. IF THE PETITION ALSO SEEKS A CONSERVATORSHIP, ADDITIONAL ESTIMATES
5 PURSUANT TO SECTION 14-5404, SUBSECTION B, PARAGRAPH 8.

6 C. IF THE PETITIONER IS UNABLE TO PROVIDE THE ESTIMATES REQUIRED
7 PURSUANT TO SUBSECTION B, PARAGRAPH 9 OF THIS SECTION, THE PETITIONER MUST
8 STATE IN THE PETITION ALL EFFORTS MADE BY THE PETITIONER TO OBTAIN THE
9 ESTIMATES. AT LEAST FIVE JUDICIAL DAYS BEFORE THE FIRST HEARING SCHEDULED TO
10 CONSIDER THE APPOINTMENT OF A TEMPORARY OR PERMANENT GUARDIAN, THE PETITIONER
11 MUST FILE WRITTEN NOTICE OF NEW OR UPDATED ESTIMATES BASED ON INFORMATION
12 LEARNED SINCE FILING THE PETITION AND PROVIDE THIS NOTICE TO ALL PERSONS
13 LISTED AND IN THE MANNER PRESCRIBED PURSUANT TO SECTION 14-5309.

14 ~~G-~~ D. On the filing of a petition, the court shall set a hearing date
15 on the issues of incapacity. Unless the alleged incapacitated person is
16 represented by independent counsel, the court shall appoint an attorney to
17 represent that person in the proceeding. The alleged incapacitated person
18 shall be interviewed by an investigator appointed by the court and shall be
19 examined by a physician, psychologist or registered nurse appointed by the
20 court. The investigator and the person conducting the examination shall
21 submit their reports in writing to the court. In addition to information
22 required under subsection ~~D-~~ E, the court may direct that either report
23 include other information the court deems appropriate. The investigator also
24 shall interview the person seeking appointment as guardian, visit the present
25 place of abode of the alleged incapacitated person and the place where it is
26 proposed that the person will be detained or reside if the requested
27 appointment is made and submit a report in writing to the court. The alleged
28 incapacitated person is entitled to be present at the hearing and to see or
29 hear all evidence bearing on that person's condition. The alleged
30 incapacitated person is entitled to be represented by counsel, to present
31 evidence, to cross-examine witnesses, including the court-appointed examiner
32 and investigator, and to trial by jury. The court may determine the issue at
33 a closed hearing if the alleged incapacitated person or that person's counsel
34 so requests.

35 ~~D-~~ E. A report filed pursuant to this section by a physician,
36 psychologist or registered nurse acting within that person's scope of
37 practice shall include the following information:

38 1. A specific description of the physical, psychiatric or
39 psychological diagnosis of the person.

40 2. A comprehensive assessment listing any functional impairments of
41 the alleged incapacitated person and an explanation of how and to what extent
42 these functional impairments may prevent that person from receiving or
43 evaluating information in making decisions or in communicating informed
44 decisions regarding that person.

1 3. An analysis of the tasks of daily living the alleged incapacitated
2 person is capable of performing without direction or with minimal direction.

3 4. A list of all medications the alleged incapacitated person is
4 receiving, the dosage of the medications and a description of the effects
5 each medication has on the person's behavior to the best of the declarant's
6 knowledge.

7 5. A prognosis for improvement in the alleged incapacitated person's
8 condition and a recommendation for the most appropriate rehabilitation plan
9 or care plan.

10 6. Other information the physician, psychologist or registered nurse
11 deems appropriate.

12 Sec. 7. Section 14-5304, Arizona Revised Statutes, is amended to read:
13 14-5304. Findings; order of appointment; limitations; filing

14 A. In exercising its appointment authority pursuant to this chapter,
15 the court shall encourage the development of maximum self-reliance and
16 independence of the incapacitated person.

17 B. The court may appoint a general or limited guardian as requested if
18 it is satisfied by clear and convincing evidence that:

19 1. The person for whom a guardian is sought is incapacitated.

20 2. The appointment is necessary to provide for the demonstrated needs
21 of the incapacitated person.

22 3. The person's needs cannot be met by less restrictive means,
23 including the use of appropriate technological assistance.

24 C. ON APPOINTMENT OF A GUARDIAN, THE COURT SHALL ENTER ONE OF THE
25 FOLLOWING ORDERS CONCERNING THE WARD'S FINANCES:

26 1. REQUIRE THE GUARDIAN TO FILE A BUDGET PURSUANT TO SECTION
27 14-5418.01.

28 2. AUTHORIZE OR LIMIT EXPENDITURES FROM THE ESTATE OF THE WARD.

29 3. REQUIRE THE GUARDIAN TO PROCEED IN ANY OTHER MANNER THE COURT FINDS
30 IS IN THE WARD'S BEST INTEREST.

31 D. ON APPOINTMENT OF A GUARDIAN, THE COURT SHALL ENTER AN ORDER TO
32 PROVIDE WHEN PAYMENT OF THE GUARDIAN'S FEES, THE GUARDIAN'S ATTORNEY FEES AND
33 THE FEES OF OTHER PERSONS APPOINTED PURSUANT TO THIS ARTICLE MAY BEGIN.

34 E. NOTWITHSTANDING SUBSECTION C OF THIS SECTION, IF THE GUARDIAN IS A
35 LICENSED FIDUCIARY, THE COURT SHALL REQUIRE THE GUARDIAN TO FILE A BUDGET
36 PURSUANT TO SECTION 14-5418.01, UNLESS THE COURT MAKES A SPECIFIC FINDING
37 THAT IT WOULD NOT BE IN THE BEST INTEREST OF THE WARD.

38 F. AFTER A GUARDIAN HAS BEEN APPOINTED, THE COURT MAY DISCHARGE THE
39 WARD'S ATTORNEY IF THE COURT FINDS THAT THE COST OF THE CONTINUED
40 REPRESENTATION EXCEEDS THE PROBABLE BENEFIT TO THE WARD. UNTIL DISCHARGED,
41 THE WARD'S ATTORNEY HAS A CONTINUING DUTY TO REVIEW ANY PROPOSED BUDGETS AND
42 ACCOUNTS OF THE GUARDIAN AND TO NOTIFY THE COURT OF ANY OBJECTIONS OR
43 CONCERNS THE ATTORNEY IDENTIFIES WITH RESPECT TO THE GUARDIAN'S PROPOSED
44 BUDGETS AND ACCOUNTS.

1 ~~C.~~ G. In conformity with the evidence regarding the extent of the
2 ward's incapacity, the court may appoint a limited guardian and specify time
3 limits on the guardianship and limitations on the guardian's powers.

4 ~~D.~~ H. The guardian shall file an acceptance of appointment with the
5 appointing court.

6 Sec. 8. Section 14-5306, Arizona Revised Statutes, is amended to read:
7 14-5306. Termination of guardianship for incapacitated person

8 The authority and responsibility of a guardian for an incapacitated
9 person terminates ~~upon~~ ON the death of the guardian or ward, a determination
10 of incapacity of the guardian, or ~~upon removal~~ SUBSTITUTION or resignation as
11 provided in section 14-5307. Testamentary appointment under an informally
12 probated will terminates if the will is later denied probate in a formal
13 proceeding. Termination does not affect ~~his~~ THE GUARDIAN'S liability for
14 prior acts ~~nor his~~ OR THE GUARDIAN'S obligation to account for funds and
15 assets of ~~his~~ THE GUARDIAN'S ward.

16 Sec. 9. Section 14-5307, Arizona Revised Statutes, is amended to read:
17 14-5307. Substitution or resignation of guardian; termination
18 of incapacity

19 A. On petition of the ward or any person interested in ~~his~~ THE WARD'S
20 welfare, OR ON THE COURT'S OWN INITIATIVE, the court ~~may remove~~, WITH OR
21 WITHOUT A HEARING, SHALL SUBSTITUTE a guardian and appoint a successor if it
22 is in the best ~~interests~~ INTEREST of the ward. ANY PARTY MAY REQUEST A
23 HEARING ON THE PETITION. THE COURT SHALL CONDUCT A HEARING ON THE PETITION
24 IF NECESSARY TO RESOLVE THE ISSUES PRESENTED BY THE PETITION AND ANY RESPONSE
25 TO THE PETITION. THE COURT DOES NOT NEED TO FIND THAT THE GUARDIAN ACTED
26 INAPPROPRIATELY TO FIND THAT THE SUBSTITUTION IS IN THE WARD'S BEST INTEREST.
27 THE GUARDIAN AND THE GUARDIAN'S ATTORNEY MAY BE COMPENSATED FROM THE WARD'S
28 ESTATE FOR DEFENDING AGAINST A PETITION FOR SUBSTITUTION ONLY FOR THE AMOUNT
29 ORDERED BY THE COURT AND ON APPLICATION BY THE GUARDIAN. On petition of the
30 guardian, the court may accept a resignation and make any other order ~~which~~
31 THAT may be appropriate.

32 ~~B. An order adjudicating incapacity may specify a minimum period, not~~
33 ~~exceeding one year, during which no petition for an adjudication that the~~
34 ~~ward is no longer incapacitated may be filed without special leave. Subject~~
35 ~~to this restriction, the ward or any person interested in his welfare may~~
36 ~~petition the court for an order that the ward is no longer incapacitated and~~
37 ~~for the removal or resignation of the guardian. A request for this order may~~
38 ~~be made by informal letter to the court or judge. Any person who knowingly~~
39 ~~interferes with the transmission of this request may be found in contempt of~~
40 ~~court.~~

41 B. ON ENTERING AN ORDER ADJUDICATING INCAPACITY AND AFTER CONSIDERING
42 THE REASONABLENESS OF THE POSITIONS TAKEN BY THE LITIGANTS, THE STRENGTH OF
43 THE EVIDENCE PRESENTED, INCLUDING THE PROBABILITY THAT THE WARD'S INCAPACITY
44 MAY BE REMOVED IN THE FUTURE, THE BENEFITS TO THE WARD, THE BEST INTEREST OF
45 THE WARD, THE EXPECTED COST TO THE WARD'S ESTATE AND OTHER RELEVANT FACTORS,

1 THE COURT MAY SPECIFY A MINIMUM PERIOD, NOT EXCEEDING ONE YEAR, DURING WHICH
2 A PETITION FOR AN ADJUDICATION THAT THE WARD IS NO LONGER INCAPACITATED OR
3 FOR REMOVAL OR SUBSTITUTION OF A GUARDIAN MAY NOT BE FILED BY ANY PERSON
4 OTHER THAN THE WARD WITHOUT SPECIAL LEAVE OF THE COURT. THE WARD MAY
5 PETITION THE COURT FOR AN ORDER THAT THE WARD IS NO LONGER INCAPACITATED OR
6 PETITION FOR SUBSTITUTION OF THE GUARDIAN AT ANY TIME. A REQUEST FOR THIS
7 ORDER MAY BE MADE BY INFORMAL LETTER TO THE COURT OR JUDGE. A PERSON WHO
8 KNOWINGLY INTERFERES WITH THE TRANSMISSION OF THIS REQUEST MAY BE FOUND IN
9 CONTEMPT OF COURT.

10 C. AN INTERESTED PERSON, OTHER THAN THE GUARDIAN OR WARD, SHALL NOT
11 FILE A PETITION FOR ADJUDICATION THAT THE WARD IS NO LONGER INCAPACITATED
12 EARLIER THAN ONE YEAR AFTER THE ORDER ADJUDICATING INCAPACITY WAS ENTERED
13 UNLESS THE COURT PERMITS IT TO BE MADE ON THE BASIS OF AFFIDAVITS THAT THERE
14 IS REASON TO BELIEVE THAT THE WARD IS NO LONGER INCAPACITATED.

15 D. AN INTERESTED PERSON, OTHER THAN THE GUARDIAN OR WARD, SHALL NOT
16 FILE A PETITION TO SUBSTITUTE A GUARDIAN EARLIER THAN ONE YEAR AFTER THE
17 ORDER ADJUDICATING INCAPACITY WAS ENTERED UNLESS THE COURT PERMITS IT TO BE
18 MADE ON THE BASIS OF AFFIDAVITS THAT THERE IS REASON TO BELIEVE THAT THE
19 CURRENT GUARDIAN WILL ENDANGER THE WARD'S PHYSICAL, MENTAL OR EMOTIONAL
20 HEALTH IF NOT REMOVED.

21 E. TO MODIFY ANY TYPE OF GUARDIANSHIP ORDER, AN INTERESTED PERSON MUST
22 SUBMIT AN AFFIDAVIT OR VERIFIED PETITION SETTING FORTH DETAILED FACTS
23 SUPPORTING THE REQUESTED MODIFICATION AND SHALL GIVE NOTICE AND A COPY OF THE
24 AFFIDAVIT OR VERIFIED PETITION TO OTHER PARTIES TO THE PROCEEDING. OTHER
25 PARTIES MAY FILE OPPOSING AFFIDAVITS.

26 ~~C.~~ F. Before ~~removing~~ SUBSTITUTING a guardian, accepting the
27 resignation of a guardian or ordering that a ward's incapacity has
28 terminated, the court, following the same procedures to safeguard the rights
29 of the ward as apply to a petition for appointment of a guardian, may send an
30 investigator to the residence of the present guardian and to the place where
31 the ward resides or is detained to observe conditions and report in writing
32 to the court.

33 Sec. 10. Section 14-5308, Arizona Revised Statutes, is amended to
34 read:

35 14-5308. Court appointed investigators; qualifications; duties

36 A. An investigator appointed by the court under sections 14-5303 and
37 14-5407 shall have a background in law, nursing or social work and shall have
38 no personal interest in the proceedings.

39 B. The investigator shall conduct an investigation before the court
40 appoints a guardian or a conservator to allow the court to determine the
41 appropriateness of that appointment. As directed by the court, the
42 investigator shall conduct additional investigations to determine if it is
43 necessary to continue the appointment.

44 C. In conducting investigations the investigator shall:

1 1. Interview the alleged incapacitated person or the protected person
2 and the proposed guardian or conservator.

3 2. Visit the alleged incapacitated person's or the protected person's
4 current or proposed place of residence.

5 3. Interview nursing home or care home care givers and the home's
6 manager or administrator.

7 4. Transport the alleged incapacitated person or the protected person
8 as directed by the court.

9 D. In conducting interviews under this section the investigator may
10 examine any court record, medical record or financial record that relates to
11 the investigation.

12 E. As a condition of appointment as an investigator the court shall
13 require the applicant to furnish a full set of fingerprints to enable the
14 court to conduct a criminal background investigation to determine the
15 applicant's suitability. The court shall submit the completed fingerprint
16 card to the department of public safety. The department shall provide the
17 applicant's criminal history record information to the court pursuant to
18 section 41-1750. The department of public safety shall conduct criminal
19 history records checks pursuant to section 41-1750 and applicable federal
20 law. The department of public safety is authorized to submit fingerprint
21 card information to the federal bureau of investigation for a national
22 criminal history records check.

23 F. AN INVESTIGATOR APPOINTED BY THE COURT PURSUANT TO SECTIONS 14-5303
24 AND 14-5407, AND ANY PERSON OR ENTITY CLOSELY RELATED TO THE INVESTIGATOR,
25 SHALL NOT BE APPOINTED AS A FIDUCIARY, ATTORNEY OR PROFESSIONAL IN THE SAME
26 CASE OR FOR THE SAME PERSON WHO WAS THE SUBJECT OF THE PRIOR INVESTIGATION
27 UNLESS OTHERWISE ORDERED BY THE COURT FOR GOOD CAUSE. FOR THE PURPOSES OF
28 THIS SUBSECTION, "CLOSELY RELATED" INCLUDES A SPOUSE, CHILD, PARENT, SIBLING,
29 GRANDPARENT, AUNT, UNCLE OR COUSIN OF THE INVESTIGATOR AND ANY BUSINESS,
30 PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY, TRUST OR OTHER ENTITY
31 THAT THE INVESTIGATOR OR A CLOSELY RELATED PERSON HAS A FINANCIAL INTEREST
32 IN, IS EMPLOYED BY OR RECEIVES COMPENSATION OR FINANCIAL BENEFIT FROM. THIS
33 SUBSECTION DOES NOT APPLY TO A PUBLIC FIDUCIARY.

34 Sec. 11. Section 14-5309, Arizona Revised Statutes, is amended to
35 read:

36 14-5309. Notices in guardianship proceedings

37 A. In a proceeding for the appointment or ~~removal~~ SUBSTITUTION of a
38 guardian of a ward or an alleged incapacitated person other than the
39 appointment of a temporary guardian or temporary suspension of a guardian,
40 notice of a hearing shall be given to each of the following:

41 1. The ward or the alleged incapacitated person and that person's
42 spouse, parents and adult children.

43 2. Any person who is serving as guardian or conservator or who has the
44 care and custody of the ward or the alleged incapacitated person.

1 3. In case no other person is notified under paragraph 1 of this
2 subsection, at least one of that person's closest adult relatives, if any can
3 be found.

4 4. Any person who has filed a demand for notice.

5 B. At least fourteen days before the hearing notice shall be served
6 personally on the ward or the alleged incapacitated person, and that person's
7 spouse and parents if they can be found within the state. Notice to the
8 spouse and parents, if they cannot be found within the state, and to all
9 other persons except the ward or the alleged incapacitated person shall be
10 given as provided in section 14-1401. Waiver of notice by the ward or the
11 alleged incapacitated person is not effective unless that person attends the
12 hearing.

13 Sec. 12. Section 14-5311, Arizona Revised Statutes, is amended to
14 read:

15 14-5311. Who may be guardian; priorities

16 A. Any qualified person may be appointed guardian of an incapacitated
17 person, subject to the requirements of section 14-5106.

18 B. The court may consider the following persons for appointment as
19 guardian in the following order:

20 1. A guardian or conservator of the person or a fiduciary appointed or
21 recognized by the appropriate court of any jurisdiction in which the
22 incapacitated person resides.

23 2. An individual or corporation nominated by the incapacitated person
24 if the person has, in the opinion of the court, sufficient mental capacity to
25 make an intelligent choice.

26 3. The person nominated in the incapacitated person's most recent
27 durable power of attorney.

28 4. The spouse of the incapacitated person.

29 5. An adult child of the incapacitated person.

30 6. A parent of the incapacitated person, including a person nominated
31 by will or other writing signed by a deceased parent.

32 7. Any relative of the incapacitated person with whom the
33 incapacitated person has resided for more than six months before the filing
34 of the petition.

35 8. The nominee of a person who is caring for or paying benefits to the
36 incapacitated person.

37 9. If the incapacitated person is a veteran, the spouse of a veteran
38 or the minor child of a veteran, the department of veterans' services.

39 10. A fiduciary, ~~WHO IS LICENSED PURSUANT TO SECTION 14-5651 OR A~~
40 guardian, ~~or~~ conservator OR OTHER APPROPRIATE PERSON.

41 11. A PUBLIC FIDUCIARY.

42 C. A person listed in subsection B, paragraph 4, 5, 6, 7 or 8 OF THIS
43 SECTION may nominate in writing a person to serve in that person's place.
44 With respect to persons who have equal priority, the court shall select the
45 one the court determines is best qualified to serve.

1 D. For good cause the court may pass over a person who has priority
2 and appoint a person who has a lower priority or no priority. FOR THE
3 PURPOSES OF THIS SUBSECTION, "GOOD CAUSE" INCLUDES, AT A MINIMUM, THE
4 ESTIMATED COST OF THE FIDUCIARY'S FEE, THE FIDUCIARY'S ATTORNEY FEE AND THE
5 ABILITY OF THE WARD TO PAY THESE FEES WITHOUT ADVERSELY AFFECTING THE WARD'S
6 FINANCIAL ABILITY TO PROVIDE FOR THE WARD'S REASONABLE AND NECESSARY LIVING
7 EXPENSES. ON REQUEST BY A PERSON WHO WAS PASSED OVER BY THE COURT PURSUANT
8 TO THIS SUBSECTION, THE COURT SHALL MAKE A SPECIFIC FINDING REGARDING THE
9 COURT'S DETERMINATION OF GOOD CAUSE AND WHY THE PERSON WAS NOT APPOINTED.

10 Sec. 13. Section 14-5312.01, Arizona Revised Statutes, is amended to
11 read:

12 14-5312.01. Inpatient treatment; rights and duties of ward and
13 guardian

14 A. Except as provided in subsection B of this section, a guardian of
15 an incapacitated person may consent to psychiatric and psychological care and
16 treatment, including the administration of psychotropic medications, if the
17 care and treatment take place outside a level one behavioral health facility
18 licensed by the department of health services.

19 B. On clear and convincing evidence that the ward is incapacitated as
20 a result of a mental disorder as defined in section 36-501, and is currently
21 in need of inpatient mental health care and treatment, the court may
22 authorize a guardian appointed pursuant to this title to give consent for the
23 ward to receive inpatient mental health care and treatment, including
24 placement in a level one behavioral health facility licensed by the
25 department of health services and medical, psychiatric and psychological
26 treatment associated with that placement. The evidence shall be supported by
27 the opinion of a mental health expert who is either a physician licensed
28 pursuant to title 32, chapter 13 or 17 and who is a specialist in psychiatry
29 or a psychologist who is licensed pursuant to title 32, chapter 19.1.

30 C. In making its decision to grant authority to a guardian pursuant to
31 subsection B of this section, the court shall consider the cause of the
32 ward's disability and the ward's foreseeable clinical needs. The court shall
33 limit the guardian's authority to what is reasonably necessary to obtain the
34 care required for the ward in the least restrictive treatment alternative.
35 The court may limit the duration of the guardian's authority to consent to
36 inpatient mental health care and treatment and include other orders the court
37 determines necessary to protect the ward's best interests.

38 D. Within forty-eight hours after placement of the ward pursuant to
39 this section, the guardian shall give notice of this action to the ward's
40 attorney. When the attorney receives this notice the attorney shall assess
41 the appropriateness of the placement pursuant to section 36-537, subsection B
42 and section 36-546, subsection H. If requested by the attorney, the court
43 shall hold a hearing on the appropriateness of the placement within three
44 days after receiving that request.

1 E. The behavioral health treatment facility shall assess the
2 appropriateness of the ward's placement every thirty days and shall provide a
3 copy of the assessment report to the ward's attorney. The ward's attorney
4 may attend the ward's evaluation, staffing, treatment team and case
5 management meetings.

6 F. When the ward is admitted to a level one behavioral health
7 treatment facility pursuant to this section, the guardian shall provide the
8 facility with the name, address and telephone number of the ward's attorney.
9 The facility shall include this information in the ward's treatment record.

10 G. Within twenty-four hours after the facility receives any writing in
11 which the ward requests release from the facility, any change in placement or
12 a change in the type or duration of treatment, the facility shall forward
13 this information to the ward's attorney.

14 H. All health care providers, treatment facilities and regional
15 behavioral health authorities shall allow the ward's attorney access to all
16 of the ward's medical, psychiatric, psychological and other treatment
17 records.

18 I. The ward's guardian shall place the ward in a least restrictive
19 treatment alternative within ten days after the guardian is notified by the
20 medical director of the inpatient facility that the ward no longer needs
21 inpatient care. The ward, a representative of the inpatient treatment
22 facility, the ward's attorney, the ward's physician or any other interested
23 person may petition the court to order the facility to discharge the ward to
24 a least restrictive treatment alternative if the guardian does not act
25 promptly to do so.

26 J. If the ward is in a behavioral health treatment facility at the
27 time of the initial hearing on the petition for appointment of a guardian,
28 the court investigator and the ward's attorney shall advise the court of the
29 appropriateness of the placement.

30 K. An attorney appointed pursuant to section 14-5303, subsection ~~C~~ D
31 remains the attorney of record until the attorney is discharged by the court.
32 The court shall ensure that a ward whose guardian has been granted mental
33 health treatment authority is represented by an attorney at all times the
34 guardian has that authority. Unless the court finds that the ward has
35 insufficient assets to meet the ward's reasonable and necessary care and
36 living expenses, the ward shall pay the attorney's reasonable fees.

37 L. If deemed necessary to adequately assess a request for mental
38 health treatment authority or to review the ward's placement in a behavioral
39 health treatment facility, the court may order an independent evaluation by
40 either a physician who is licensed pursuant to title 32, chapter 13 or 17 and
41 who is a specialist in psychiatry or a psychologist who is licensed pursuant
42 to title 32, chapter 19.1. If the ward has insufficient funds to pay the
43 total cost of this evaluation, the court may deem all or any part of the
44 evaluator's fee to be a county expense after determining the reasonableness
45 of that fee.

1 M. Instead of ordering an independent evaluation pursuant to
2 subsection L of this section, the court may accept a report conducted on
3 behalf of the behavioral health treatment facility if the court finds that
4 the report meets the requirements of an independent evaluation.

5 N. The court may decide that the ward's right to retain or obtain a
6 driver license and any other civil right that may be suspended by operation
7 of law is not affected by the appointment of a guardian.

8 O. If the court grants the guardian the authority to consent to
9 inpatient mental health care and treatment pursuant to this section, the
10 medical director of a level one behavioral health facility licensed by the
11 department of health services may admit the ward at the guardian's request.

12 P. A guardian who is authorized by the court to consent to inpatient
13 mental health care and treatment pursuant to this section shall file with the
14 annual report of the guardian required pursuant to section 14-5315 an
15 evaluation report by a physician or a psychologist who meets the requirements
16 of subsection B of this section. The evaluation report shall indicate if the
17 ward currently needs inpatient mental health care and treatment. If the
18 guardian does not file the evaluation report or if the report indicates that
19 the ward does not need inpatient mental health care and treatment, the
20 guardian's authority to consent to this treatment ceases. If the report
21 indicates that the ward currently needs this treatment, the guardian's
22 authority to consent to this treatment continues. If the report supports the
23 continuation of the guardian's authority to consent to this treatment, the
24 ward's attorney shall review the report with the ward. The ward may contest
25 the continuation of the guardian's authority by filing a request for a court
26 hearing within ten business days after the report is filed. The court shall
27 hold this hearing within thirty calendar days after it receives the request.
28 The guardian's authority continues pending the court's ruling on the issue.
29 At the hearing the guardian has the burden of proving by clear and convincing
30 evidence that the ward is currently in need of inpatient mental health care
31 and treatment.

32 Q. The court may discharge an attorney who was appointed pursuant to
33 section 14-5303, subsection G— D subsequent to the appointment of a guardian
34 if it clearly appears from specific facts presented by affidavit or verified
35 petition that continued representation of the ward is no longer necessary or
36 desirable. The factual basis must include, at a minimum, consideration of
37 the following:

- 38 1. The nature and history of the ward's illness.
- 39 2. The ward's history of hospitalization.
- 40 3. The ward's current and anticipated living arrangements.
- 41 4. Whether the ward's inpatient treatment is anticipated to be a
42 one-time hospitalization for the purpose of stabilizing the ward's condition
43 and further hospitalizations are not likely to be necessary.
- 44 5. Whether the ward's current and anticipated living arrangements are
45 the least restrictive alternatives possible.

1 Sec. 14. Section 14-5313, Arizona Revised Statutes, is amended to
2 read:

3 14-5313. Proceedings subsequent to appointment; venue

4 A. The court at the place where the ward resides has concurrent
5 jurisdiction with the court that appointed the guardian or in which
6 acceptance of a parental or spousal appointment was filed, over resignation,
7 ~~removal~~ SUBSTITUTION, accounting and other proceedings relating to the
8 guardianship including proceedings to limit the authority previously
9 conferred on a guardian or to remove limitations previously imposed.

10 B. If the court located at the place where the ward resides is not the
11 court in which acceptance of appointment is filed, the court in which
12 proceedings subsequent to appointment are commenced shall in all appropriate
13 cases notify the other court, in this or another state, and after
14 consultation with that court shall determine whether to retain jurisdiction
15 or transfer the proceedings to the other court, whichever may be in the best
16 interests of the ward. A copy of any order accepting a resignation, ~~removing~~
17 SUBSTITUTING a guardian or altering authority shall be sent to the court in
18 which acceptance of appointment is filed.

19 Sec. 15. Section 14-5314, Arizona Revised Statutes, is amended to
20 read:

21 14-5314. Compensation of appointees; definitions

22 A. If not otherwise compensated for services rendered, an
23 investigator, accountant, lawyer, physician, registered nurse, psychologist
24 or guardian who is appointed pursuant to this article, including an
25 independent lawyer representing the alleged incapacitated person pursuant to
26 section 14-5303, subsection ~~E~~ D, is entitled to reasonable compensation from
27 the estate of the ward if the petition is granted, AS A CLAIM AGAINST THE
28 ESTATE, or from the petitioner if the petition is denied. PAYMENTS FROM THE
29 ESTATE SHALL NOT BE MADE TO THESE PERSONS UNTIL THE COURT ENTERS AN ORDER
30 AUTHORIZING PAYMENT PURSUANT TO SECTION 14-5304, SUBSECTIONS C AND D.

31 B. If the petitioner withdraws the petition or if the petition is
32 dismissed because of the petitioner's failure to prosecute, the court may
33 order that the compensation of the investigator, accountant, lawyer,
34 physician, registered nurse, psychologist or guardian appointed pursuant to
35 this article, including an independent lawyer representing the alleged
36 incapacitated person pursuant to section 14-5303, subsection ~~E~~ D, be paid
37 either from the ward's estate or by the petitioner, depending on the facts
38 and circumstances. In making this determination, the court may consider any
39 evidence it deems appropriate.

40 C. A lawyer who is employed by the guardian to represent the guardian
41 in the guardian's appointment or duties as guardian is entitled to reasonable
42 compensation from the ward's estate if the petition is granted. If the
43 petitioner withdraws the petition or if the court dismisses the petition
44 because of the petitioner's failure to prosecute, the court may order that
45 the compensation of the proposed guardian's lawyer be paid either from the

1 ward's estate or by the petitioner, depending on the facts and circumstances.
2 In making these determinations, the court may consider any evidence it deems
3 appropriate.

4 D. A lawyer who is employed by the petitioner to represent the
5 petitioner in seeking the appointment of a guardian is entitled to reasonable
6 compensation from the ward's estate if the petition is granted.

7 E. If the court compensates the provider of a service, the court may
8 charge the estate for the reasonable cost of the service and shall deposit
9 these monies in the probate fund pursuant to section 14-5433.

10 F. If compensation by the ward or the petitioner is not feasible the
11 court shall determine and pay reasonable compensation for services rendered
12 by an investigator, accountant, lawyer, physician, registered nurse,
13 psychologist or guardian appointed in a guardianship proceeding.

14 G. For the purposes of this section:

15 1. "Guardian" includes both a guardian and a temporary guardian.

16 2. "Petition" means a petition filed pursuant to section 14-5303,
17 subsection A or section 14-5310, subsection A.

18 3. "Ward" includes an alleged incapacitated person.

19 Sec. 16. Section 14-5315, Arizona Revised Statutes, is amended to
20 read:

21 14-5315. Guardian reports; contents

22 A. A guardian shall submit a written report to the court on each
23 anniversary date of qualification as guardian, on resignation or ~~removal~~
24 SUBSTITUTION as guardian and on termination of the ward's disability.

25 B. The guardian shall mail a copy of the report to:

26 1. The ward.

27 2. The ward's conservator.

28 3. The ward's spouse or the ward's parents if the ward is not married.

29 4. A court appointed attorney for the ward.

30 5. Any other interested person who has filed a demand for notice with
31 the court.

32 C. The report shall include the following:

33 1. The type, name and address of the home or facility where the ward
34 lives and the name of the person in charge of the home.

35 2. The number of times the guardian has seen the ward in the last
36 twelve months.

37 3. The date the guardian last saw the ward.

38 4. The name and address of the ward's physician or registered nurse
39 practitioner.

40 5. The date the ward was last seen by a physician or a registered
41 nurse practitioner.

42 6. A copy of the ward's physician's or registered nurse practitioner's
43 report to the guardian or, if none exists, a summary of the physician's or
44 the registered nurse practitioner's observations on the ward's physical and
45 mental condition.

1 7. Major changes in the ward's physical or mental condition observed
2 by the guardian in the last year.

3 8. The guardian's opinion as to whether the guardianship should be
4 continued.

5 9. A summary of the services provided to the ward by a governmental
6 agency and the name of the individual responsible for the ward's affairs with
7 that agency.

8 Sec. 17. Section 14-5404, Arizona Revised Statutes, is amended to
9 read:

10 14-5404. Original petition for appointment or protective order

11 A. The person allegedly in need of protection, any person who is
12 interested in that person's estate or affairs, including that person's
13 parent, guardian or custodian, or any person who would be adversely affected
14 by lack of effective management of that person's estate and affairs may
15 petition for the appointment of a conservator or for any other appropriate
16 protective order.

17 B. The petition shall set forth, to the extent known:

18 1. The interest of the petitioner.

19 2. The name, age, residence and address of the person allegedly in
20 need of protection.

21 3. The name, address and priority for appointment of the person whose
22 appointment is sought.

23 4. The name and address of the guardian, if any, of the person
24 allegedly in need of protection.

25 5. The name and address of the nearest relative of the person
26 allegedly in need of protection known to the petitioner.

27 6. A general statement of the estate of the person allegedly in need
28 of protection with an estimate of its value, including any compensation,
29 insurance, pension or allowance to which the person is entitled.

30 7. The reason why appointment of a conservator or any other protective
31 order is necessary.

32 8. UNLESS THE PROPOSED CONSERVATOR IS A PUBLIC FIDUCIARY, A GOOD FAITH
33 ESTIMATE OF ALL PROJECTED MONTHLY COSTS ASSOCIATED WITH THE CONSERVATORSHIP
34 TO BE PAID FROM THE PROTECTED PERSON'S ESTATE AND OVER WHICH THE CONSERVATOR
35 WILL EXERCISE CONTROL, EXCEPT MEDICAL COSTS AND TAXES, THAT WILL BE NECESSARY
36 TO CARE FOR THE PROTECTED PERSON UNTIL THE FIRST ACCOUNTING IS TIMELY
37 FILED. THE PETITIONER IS REQUIRED ONLY TO ESTIMATE THESE COSTS BASED ON THE
38 INFORMATION REASONABLY KNOWN AT THE TIME THE PETITION IS FILED, INCLUDING
39 INFORMATION OBTAINED FROM ANY CONSERVATOR PROPOSED IN THE PETITION. THE
40 PETITION MUST PROVIDE ESTIMATES FOR THE FOLLOWING CATEGORIES OF COSTS:

41 (a) THE AVERAGE MONTHLY COST OF HOUSING AND CARE OF THE WARD.

42 (b) THE AVERAGE MONTHLY COST OF DISCRETIONARY CARE SERVICES FOR THE
43 WARD.

44 (c) THE AVERAGE MONTHLY FIDUCIARY FEES AND EXPENSES EXPECTED TO BE
45 INCURRED BY THE CONSERVATOR.

1 (d) THE AMOUNT OF ATTORNEY FEES INCURRED AND EXPECTED TO BE INCURRED
2 BY ALL APPOINTED ATTORNEYS THROUGH THE ISSUANCE OF A COURT ORDER APPOINTING A
3 CONSERVATOR AS REQUESTED IN THE PETITION.

4 (e) THE AVERAGE MONTHLY ATTORNEY FEES AND EXPENSES EXPECTED TO BE
5 INCURRED BY ALL APPOINTED ATTORNEYS UNTIL THE APPROVAL OF THE FIRST
6 ACCOUNTING.

7 (f) THE AVERAGE MONTHLY ACCOUNTING FEES AND EXPENSES EXPECTED TO BE
8 INCURRED BY ALL ACCOUNTANTS OR OTHER PROFESSIONALS PREPARING ACCOUNTINGS
9 UNTIL APPROVAL OF THE FIRST ACCOUNTING.

10 (g) THE EXPECTED COST TO PREPARE THE INITIAL INVENTORY AND
11 APPRAISEMENT PURSUANT TO SECTION 14-5418.

12 (h) THE AVERAGE MONTHLY COSTS OF ALL OTHER MISCELLANEOUS COSTS OR
13 EXPENSES NOT LISTED IN SUBDIVISIONS (a) THROUGH (g) OF THIS PARAGRAPH WITH AN
14 EXPLANATION OF THE REQUESTED COST OR EXPENSE.

15 9. IF THE PETITION ALSO SEEKS A GUARDIANSHIP, ADDITIONAL ESTIMATES
16 PURSUANT TO SECTION 14-5303, PARAGRAPH 9.

17 C. IF THE PETITIONER IS UNABLE TO PROVIDE ESTIMATES OF ANY OF THE
18 AMOUNTS PRESCRIBED PURSUANT TO SUBSECTION B, PARAGRAPH 8 OF THIS SECTION IN
19 THE PETITION, THE PETITIONER MUST STATE IN THE PETITION ALL EFFORTS MADE BY
20 THE PETITIONER TO OBTAIN THE ESTIMATES. AT LEAST FIVE JUDICIAL DAYS BEFORE
21 THE FIRST HEARING SCHEDULED TO CONSIDER THE APPOINTMENT OF A TEMPORARY OR
22 PERMANENT CONSERVATOR, THE PETITIONER MUST FILE WRITTEN NOTICE OF NEW OR
23 UPDATED ESTIMATES BASED ON INFORMATION LEARNED SINCE FILING THE PETITION AND
24 PROVIDE THIS NOTICE TO ALL PERSONS LISTED AND IN THE MANNER PRESCRIBED
25 PURSUANT TO SECTION 14-5405.

26 Sec. 18. Section 14-5405, Arizona Revised Statutes, is amended to
27 read:

28 14-5405. Notice in conservatorship proceedings

29 A. In a proceeding for the appointment or ~~removal~~ SUBSTITUTION of a
30 conservator of a protected person or person allegedly in need of protection,
31 other than the appointment of a temporary conservator or temporary suspension
32 of a conservator, notice of the hearing shall be given to each of the
33 following:

34 1. The protected person or the person allegedly in need of protection
35 if that person is fourteen years of age or older.

36 2. The spouse, parents and adult children of the protected person or
37 person allegedly in need of protection, or if no spouse, parents or adult
38 children can be located, at least one adult relative of the protected person
39 or the person allegedly in need of protection, if such a relative can be
40 found.

41 3. Any person who is serving as guardian or conservator or who has the
42 care and custody of the protected person or person allegedly in need of
43 protection.

44 4. Any person who has filed a demand for notice.

1 B. At least fourteen days before the hearing notice shall be served
2 personally on the protected person or the person allegedly in need of
3 protection and that person's spouse and parents if they can be found within
4 the state. Notice to the spouse and parents, if they cannot be found within
5 the state, and to all other persons except the protected person or the person
6 allegedly in need of protection shall be given in accordance with section
7 14-1401. Waiver of notice by the protected person or the person allegedly in
8 need of protection is not effective unless the protected person or the person
9 allegedly in need of protection attends the hearing.

10 Sec. 19. Section 14-5407, Arizona Revised Statutes, is amended to
11 read:

12 14-5407. Procedure concerning hearing and order on original
13 petition

14 A. On the filing of a petition for appointment of a conservator or any
15 other protective order because of minority, the court shall set a hearing
16 date on the matters alleged in the petition. If, at any time in the
17 proceeding, the court determines that the interests of the minor are or may
18 be inadequately represented, it shall appoint an attorney to represent the
19 minor. If the minor is at least fourteen years of age the court shall
20 consider the choice of the minor.

21 B. On the filing of a petition for appointment of a conservator or any
22 other protective order for reasons other than minority, the court shall set a
23 hearing date. Unless the person to be protected has counsel of ~~his~~ THE
24 PERSON'S own choice, the court shall appoint an attorney to represent ~~him~~
25 THAT PERSON. If the alleged disability is mental illness, mental deficiency,
26 mental disorder, physical illness or disability, chronic use of drugs, or
27 chronic intoxication, the court shall appoint an investigator to interview
28 the person to be protected. On petition by an interested person or on the
29 court's own motion, the court may direct that an appropriate medical or
30 psychological evaluation of the person be conducted. The investigator and
31 the person conducting the medical or psychological evaluation shall submit
32 written reports to the court before the hearing date.

33 C. In any case where the veterans administration is or may be an
34 interested party, a certificate of an authorized official of the veterans
35 administration that the person allegedly in need of protection has been found
36 incapable of handling the benefits payable, on examination in accordance with
37 the laws and regulations governing the veterans administration, is prima
38 facie evidence of the necessity for appointment of a conservator.

39 D. The person allegedly in need of protection is entitled to be
40 present at the hearing, to be represented by counsel, to present evidence and
41 to cross-examine witnesses, including any court appointed examiner and
42 investigator. The issue may be determined at a closed hearing if the person
43 allegedly in need of protection or that person's counsel so requests.

44 E. After the hearing, ~~upon~~ ON a finding that a basis for the
45 appointment of a conservator or any other protective order has been

1 established, the court shall make an appointment or other appropriate
2 protective order AND ENTER ONE OF THE FOLLOWING ORDERS CONCERNING THE
3 OBLIGATIONS OF THE APPOINTED CONSERVATOR:

4 1. REQUIRE THE CONSERVATOR TO FILE A BUDGET AS PRESCRIBED PURSUANT TO
5 SECTION 14-5418.01.

6 2. AUTHORIZE OR LIMIT EXPENDITURES FROM THE ESTATE OF THE PROTECTED
7 PERSON.

8 3. REQUIRE THE CONSERVATOR TO PROCEED IN ANY OTHER MANNER THE COURT
9 FINDS IS IN THE PROTECTED PERSON'S BEST INTEREST.

10 F. ON APPOINTMENT OF A CONSERVATOR, THE COURT SHALL ENTER AN ORDER TO
11 SPECIFY WHEN PAYMENT OF THE CONSERVATOR'S FEES AND THE FEES OF OTHER PERSONS
12 APPOINTED PURSUANT TO THIS ARTICLE MAY BEGIN.

13 G. NOTWITHSTANDING SUBSECTION E OF THIS SECTION, IF THE CONSERVATOR IS
14 A LICENSED FIDUCIARY, THE COURT SHALL REQUIRE THE CONSERVATOR TO FILE A
15 BUDGET PURSUANT TO SECTION 14-5418.01, UNLESS THE COURT MAKES A SPECIFIC
16 FINDING THAT IT WOULD NOT BE IN THE WARD'S BEST INTEREST.

17 H. AFTER A CONSERVATOR HAS BEEN APPOINTED THE COURT MAY DISCHARGE THE
18 PROTECTED PERSON'S ATTORNEY IF THE COURT FINDS THAT THE COST OF THE CONTINUED
19 REPRESENTATION EXCEEDS THE PROBABLE BENEFIT TO THE PROTECTED PERSON. UNTIL
20 DISCHARGED, THE PROTECTED PERSON'S ATTORNEY HAS A CONTINUING DUTY TO REVIEW
21 THE CONSERVATOR'S INVENTORY, PROPOSED BUDGETS AND ACCOUNTS AND TO NOTIFY THE
22 COURT OF ANY OBJECTIONS OR CONCERNS THE ATTORNEY IDENTIFIES WITH RESPECT TO
23 THE CONSERVATOR'S INVENTORY, PROPOSED BUDGETS AND ACCOUNTS.

24 Sec. 20. Section 14-5410, Arizona Revised Statutes, is amended to
25 read:

26 14-5410. Who may be appointed conservator; priorities

27 A. The court may appoint an individual or a corporation, with general
28 power to serve as trustee, as conservator of the estate of a protected person
29 subject to the requirements of section 14-5106. The following are entitled
30 to consideration for appointment in the order listed:

31 1. A conservator, guardian of property or other like fiduciary
32 appointed or recognized by the appropriate court of any other jurisdiction in
33 which the protected person resides.

34 2. An individual or corporation nominated by the protected person if
35 the protected person is at least fourteen years of age and has, in the
36 opinion of the court, sufficient mental capacity to make an intelligent
37 choice.

38 3. The person nominated in the protected person's most recent durable
39 power of attorney.

40 4. The spouse of the protected person.

41 5. An adult child of the protected person.

42 6. A parent of the protected person, or a person nominated by the will
43 of a deceased parent.

44 7. Any relative of the protected person with whom the protected person
45 has resided for more than six months before the filing of the petition.

1 8. The nominee of a person who is caring for or paying benefits to the
2 protected person.

3 9. If the protected person is a veteran, the spouse of a veteran or
4 the minor child of a veteran, the department of veterans' services.

5 10. A fiduciary, ~~WHO IS LICENSED PURSUANT TO SECTION 14-5651 OR A~~
6 guardian, ~~or~~ conservator OR OTHER APPROPRIATE PERSON.

7 11. A PUBLIC FIDUCIARY.

8 B. A person listed in subsection A, paragraph 4, 5, 6, 7 or 8 of this
9 section may nominate in writing a person to serve in that person's place.
10 With respect to persons having equal priority, the court shall select the one
11 it determines is best qualified to serve. The court, for good cause, may
12 pass over a person having priority and appoint a person having a lower
13 priority or no priority. FOR THE PURPOSES OF THIS SUBSECTION, "GOOD CAUSE"
14 INCLUDES, AT A MINIMUM, THE ESTIMATED COST OF THE FIDUCIARY AND OTHER
15 PROFESSIONAL FEES AND THE ABILITY OF THE PROTECTED PERSON TO PAY THE FEE
16 WITHOUT ADVERSELY AFFECTING THE PROTECTED PERSON'S FINANCIAL ABILITY TO
17 PROVIDE FOR THE PROTECTED PERSON'S REASONABLE AND NECESSARY LIVING
18 EXPENSES. ON THE REQUEST OF A PERSON WHO WAS PASSED OVER BY THE COURT
19 PURSUANT TO THIS SUBSECTION, THE COURT SHALL MAKE A SPECIFIC FINDING
20 REGARDING THE COURT'S DETERMINATION OF GOOD CAUSE AND WHY THE PERSON WAS NOT
21 APPOINTED.

22 Sec. 21. Section 14-5414, Arizona Revised Statutes, is amended to
23 read:

24 14-5414. Compensation and expenses; definitions

25 A. If not otherwise compensated for services rendered, any
26 investigator, accountant, lawyer, physician, registered nurse, psychologist
27 or conservator who is appointed in a protective proceeding, including ~~a~~ AN
28 INDEPENDENT lawyer ~~of~~ REPRESENTING the person alleged to be in need of
29 protection pursuant to section 14-5407, subsection B, is entitled to
30 reasonable compensation from the estate of the protected person if the
31 petition is granted, AS A CLAIM AGAINST THE ESTATE, or from the petitioner if
32 the petition is denied. PAYMENTS FROM THE ESTATE SHALL NOT BE MADE TO THESE
33 PERSONS UNTIL THE COURT ENTERS AN ORDER AUTHORIZING PAYMENT PURSUANT TO
34 SECTION 14-5407, SUBSECTION E.

35 B. If the petitioner withdraws the petition or if the court dismisses
36 the petition because of the petitioner's failure to prosecute, the court may
37 order that the compensation of the investigator, accountant, lawyer,
38 physician, registered nurse, psychologist or conservator who is appointed
39 pursuant to this article, including a lawyer of the person alleged to be in
40 need of protection pursuant to section 14-5407, subsection B, be paid either
41 from the protected person's estate or by the petitioner, depending on the
42 facts and circumstances. In making these determinations, the court may
43 consider any evidence it deems appropriate.

44 C. A lawyer who is employed by the conservator to represent the
45 conservator in the conservator's appointment or duties as conservator is

1 entitled to reasonable compensation from the estate if the petition is
2 granted. If the petitioner withdraws the petition or if the petition is
3 dismissed because of the petitioner's failure to prosecute, the court may
4 order that the compensation of the proposed conservator's lawyer be paid
5 either from the protected person's estate or by the petitioner, depending on
6 the facts and circumstances. In determining which party shall pay, the court
7 may consider any evidence it deems appropriate.

8 D. A lawyer who is employed by the petitioner to represent the
9 petitioner in seeking the appointment of a conservator is entitled to
10 reasonable compensation from the protected person's estate if the petition is
11 granted.

12 E. If the court pays for any of these services it may charge the
13 estate for reasonable compensation. The clerk shall deposit monies it
14 collects in the probate fund pursuant to section 14-5433.

15 F. Compensation payable to the department of veterans' services, when
16 acting as a conservator of the estate of a veteran or a veteran's surviving
17 spouse or minor child or the incapacitated spouse of a protected veteran,
18 shall not be more than five per cent of the amount of monies received during
19 the period covered by the conservatorship. A copy of the petition and notice
20 of hearing shall be given to the proper officer of the veterans
21 administration in the manner provided in the case of any hearing on a
22 guardian's account or any other pleading. A commission or compensation is
23 not allowed on the monies or other assets received from a prior conservator
24 or on the amount received from liquidation of loans or other investments.

25 G. For the purposes of this section:

26 1. "Conservator" includes a conservator, temporary conservator or
27 special conservator.

28 2. "Petition" means a petition filed pursuant to section 14-5401.01,
29 subsection A or section 14-5404, subsection A.

30 3. "Protected person" includes a person who is alleged to be in need
31 of protection.

32 Sec. 22. Repeal

33 Section 14-5415, Arizona Revised Statutes, is repealed.

34 Sec. 23. Title 14, chapter 5, article 4, Arizona Revised Statutes, is
35 amended by adding a new section 14-5415, to read:

36 14-5415. Resignation or substitution of conservator

37 A. ON PETITION OF THE PROTECTED PERSON OR ANY PERSON INTERESTED IN THE
38 PROTECTED PERSON'S WELFARE, OR ON THE COURT'S OWN INITIATIVE, THE COURT, WITH
39 OR WITHOUT A HEARING, SHALL SUBSTITUTE A CONSERVATOR AND APPOINT A SUCCESSOR
40 IF IT IS IN THE BEST INTEREST OF THE PROTECTED PERSON. ANY PARTY MAY REQUEST
41 A HEARING ON THE PETITION. THE COURT SHALL CONDUCT A HEARING ON THE PETITION
42 IF NECESSARY TO RESOLVE THE ISSUES PRESENTED BY THE PETITION AND ANY RESPONSE
43 TO THE PETITION. THE COURT DOES NOT NEED TO FIND THAT THE CONSERVATOR ACTED
44 INAPPROPRIATELY TO FIND THAT THE SUBSTITUTION IS IN THE PROTECTED PERSON'S
45 BEST INTEREST. THE CONSERVATOR AND THE CONSERVATOR'S ATTORNEY MAY BE

1 COMPENSATED FROM THE PROTECTED PERSON'S ESTATE FOR DEFENDING AGAINST A
2 PETITION FOR SUBSTITUTION ONLY FOR THE AMOUNT ORDERED BY THE COURT AND ON
3 APPLICATION BY THE CONSERVATOR. ON PETITION OF THE CONSERVATOR, THE COURT
4 MAY ACCEPT A RESIGNATION AND MAKE ANY OTHER ORDER THAT MAY BE APPROPRIATE.

5 B. ON ENTERING A PROTECTIVE ORDER, AND AFTER CONSIDERING THE
6 REASONABLENESS OF THE POSITIONS TAKEN BY THE LITIGANTS, THE STRENGTH OF THE
7 EVIDENCE PRESENTED, INCLUDING THE PROBABILITY THAT THE NEED FOR PROTECTION OF
8 THE PROTECTED PERSON MAY BE REMOVED IN THE FUTURE, THE BENEFITS TO AND BEST
9 INTEREST OF THE PROTECTED PERSON, THE EXPECTED COST TO THE PROTECTED PERSON'S
10 ESTATE AND OTHER RELEVANT FACTORS, THE COURT MAY SPECIFY A MINIMUM PERIOD,
11 NOT EXCEEDING ONE YEAR, DURING WHICH A PETITION FOR AN ADJUDICATION THAT THE
12 PROTECTED PERSON IS NO LONGER IN NEED OF PROTECTION OR FOR SUBSTITUTION OF A
13 CONSERVATOR MAY NOT BE FILED BY ANY PERSON OTHER THAN THE PROTECTED PERSON
14 WITHOUT SPECIAL LEAVE OF THE COURT. THE PROTECTED PERSON MAY PETITION THE
15 COURT FOR AN ORDER THAT THE PROTECTED PERSON IS NO LONGER IN NEED OF
16 PROTECTION OR PETITION FOR SUBSTITUTION OF THE CONSERVATOR AT ANY TIME. A
17 REQUEST FOR THIS ORDER MAY BE MADE BY INFORMAL LETTER TO THE COURT OR
18 JUDGE. A PERSON WHO KNOWINGLY INTERFERES WITH THE TRANSMISSION OF THIS
19 REQUEST MAY BE FOUND IN CONTEMPT OF COURT.

20 C. AN INTERESTED PERSON, OTHER THAN THE CONSERVATOR OR PROTECTED
21 PERSON, SHALL NOT FILE A PETITION FOR ADJUDICATION THAT THE PROTECTED PERSON
22 IS NO LONGER IN NEED OF PROTECTION EARLIER THAN ONE YEAR AFTER THE ENTRY OF A
23 PROTECTIVE ORDER UNLESS THE COURT PERMITS THE PERSON TO FILE THE PETITION ON
24 THE BASIS OF AFFIDAVITS THAT THERE IS REASON TO BELIEVE THAT THE PROTECTED
25 PERSON IS NO LONGER IN NEED OF PROTECTION.

26 D. AN INTERESTED PERSON, OTHER THAN THE CONSERVATOR OR PROTECTED
27 PERSON, SHALL NOT FILE A PETITION TO SUBSTITUTE A CONSERVATOR EARLIER THAN
28 ONE YEAR AFTER THE ENTRY OF A PROTECTIVE ORDER, UNLESS THE COURT PERMITS THE
29 PERSON TO FILE THE PETITION ON THE BASIS OF AFFIDAVITS THAT THERE IS REASON
30 TO BELIEVE THAT THE CURRENT CONSERVATOR WILL ENDANGER THE PROTECTED PERSON'S
31 ESTATE IF THE CONSERVATOR IS NOT SUBSTITUTED.

32 E. TO MODIFY ANY TYPE OF CONSERVATORSHIP ORDER AN INTERESTED PERSON
33 MUST SUBMIT AN AFFIDAVIT OR VERIFIED PETITION SETTING FORTH DETAILED FACTS
34 SUPPORTING THE REQUESTED MODIFICATION AND SHALL GIVE NOTICE, WITH A COPY OF
35 THE AFFIDAVIT OR VERIFIED PETITION, TO OTHER PARTIES TO THE PROCEEDING. THE
36 PARTIES MAY FILE OPPOSING AFFIDAVITS.

37 F. BEFORE IT ORDERS THAT NEED FOR PROTECTION NO LONGER EXISTS,
38 SUBSTITUTING A CONSERVATOR OR ACCEPTING THE RESIGNATION OF A CONSERVATOR, THE
39 COURT, FOLLOWING THE SAME PROCEDURES TO SAFEGUARD THE RIGHTS OF THE PROTECTED
40 PERSON THAT APPLY TO A PETITION FOR APPOINTMENT OF A CONSERVATOR, MAY REQUIRE
41 APPROPRIATE ACCOUNTS AND ENTER APPROPRIATE ORDERS TO PRESERVE AND PROTECT THE
42 ASSETS OF THE ESTATE, TO REQUIRE REIMBURSEMENT OR PAYMENT AS NEEDED AND TO
43 TRANSFER ASSETS OR TITLE THERETO TO APPROPRIATE SUCCESSORS.

1 Sec. 24. Section 14-5418, Arizona Revised Statutes, is amended to
2 read:

3 14-5418. Inventory and records

4 A. Within ~~ninety~~ SIXTY days after appointment, a conservator shall
5 prepare and file with the court an inventory of the ~~estate owned by~~ ASSETS
6 AND LIABILITIES OF the protected person on the date of the conservator's
7 appointment, listing it with reasonable detail and indicating the fair market
8 value OF EACH ASSET AND THE AMOUNT OF EACH LIABILITY as of the date of
9 appointment ~~of each item listed~~.

10 B. The conservator shall provide a copy of the inventory to the
11 protected person if the protected person can be located, has attained ~~the age~~
12 ~~of~~ fourteen years OF AGE, and has sufficient mental capacity to understand
13 these matters, and to any parent or guardian with whom the protected person
14 resides. The conservator shall keep suitable records of the conservator's
15 administration and exhibit the records on request of any interested person.

16 C. UNLESS OTHERWISE ORDERED BY THE COURT, A PERSON WHO IS ENTITLED TO
17 NOTICE OF THE CONSERVATOR'S ANNUAL ACCOUNT PURSUANT TO SECTION 14-5419,
18 SUBSECTION C MAY REQUEST IN WRITING THAT THE CONSERVATOR:

19 1. ALLOW THE PERSON TO VIEW THE PROTECTED PERSON'S FINANCIAL RECORDS,
20 THE CONSERVATOR'S BILLING STATEMENTS, THE BILLING STATEMENTS OF THE
21 CONSERVATOR'S ATTORNEY OR OTHER RECORDS RELATED TO THE PROTECTED PERSON UNDER
22 THE CONSERVATOR'S CONTROL.

23 2. PROVIDE THE REQUESTING PERSON WITH COPIES OF THESE DOCUMENTS.
24 UNLESS OTHERWISE ORDERED BY THE COURT, THE CONSERVATOR SHALL ALLOW THE PERSON
25 TO VIEW OR PROVIDE COPIES OF THE REQUESTED DOCUMENTS TO THE PERSON AS SOON AS
26 PRACTICABLE BUT NO LATER THAN THIRTY DAYS AFTER RECEIVING THE REQUEST. THE
27 REQUESTING PARTY MUST PAY REASONABLE COPYING COSTS.

28 Sec. 25. Title 14, chapter 5, article 4, Arizona Revised Statutes, is
29 amended by adding section 14-5418.01, to read:

30 14-5418.01. Annual operating budgets

31 A. IF ORDERED BY THE COURT, NOT LATER THAN SIXTY DAYS AFTER THE
32 CONSERVATOR'S APPOINTMENT AND ANNUALLY ON THE ANNIVERSARY OF THE
33 CONSERVATOR'S APPOINTMENT, THE CONSERVATOR, AFTER CONSULTING WITH THE
34 PROTECTED PERSON'S ATTORNEY AND ANY GUARDIAN AD LITEM FOR THE PROTECTED
35 PERSON, MUST PREPARE AND FILE WITH THE COURT A PROPOSED ANNUAL OPERATING
36 BUDGET FOR THE ADMINISTRATION OF THE CONSERVATORSHIP ESTATE. THE FIRST
37 ANNUAL OPERATING BUDGET MUST COVER THE DATE OF THE CONSERVATOR'S INITIAL
38 APPOINTMENT THROUGH AND INCLUDING THE END DATE OF THE CONSERVATOR'S FIRST
39 ACCOUNTING PERIOD.

40 B. THE PROPOSED ANNUAL OPERATING BUDGET REQUIRED BY THIS SECTION MUST
41 BE FILED IN A FORMAT PRESCRIBED BY THE SUPREME COURT AND, AT A MINIMUM, MUST
42 CONTAIN CATEGORIES FOR FIDUCIARY FEES AND ATTORNEY FEES.

43 C. AT THE TIME THE CONSERVATOR FILES THE ANNUAL OPERATING BUDGET WITH
44 THE COURT, THE CONSERVATOR MUST SIMULTANEOUSLY PROVIDE A COPY OF THE PROPOSED

1 ANNUAL OPERATING BUDGET TO ALL PERSONS ENTITLED TO NOTICE OF THE
2 CONSERVATOR'S ACCOUNTS PURSUANT TO SECTION 14-5419, SUBSECTION C.

3 D. THE CONSERVATOR MUST FILE A PROPOSED AMENDMENT TO THE OPERATING
4 BUDGET WITH THE COURT AND MUST PROVIDE A COPY OF THE PROPOSED AMENDMENT TO
5 ALL PERSONS ENTITLED TO A COPY OF THE PROPOSED ANNUAL OPERATING BUDGET WITHIN
6 THIRTY DAYS AFTER REASONABLY PROJECTING THAT THE EXPENDITURES FOR ANY
7 SPECIFIC CATEGORY WILL EXCEED THE APPROVED BUDGET BY MORE THAN TEN PER CENT
8 OR TWO THOUSAND DOLLARS, WHICHEVER IS GREATER, UNLESS A DIFFERENT THRESHOLD
9 FOR AMENDMENT IS PRESCRIBED BY THE COURT.

10 E. AN INTERESTED PERSON MAY FILE A WRITTEN OBJECTION TO THE PROPOSED
11 BUDGET OR AMENDMENT WITHIN FOURTEEN DAYS AFTER THE FILING DATE OF THE
12 PROPOSED BUDGET OR AMENDMENT. ON THE FILING OF A WRITTEN OBJECTION, THE
13 COURT MAY OVERRULE ALL OR PART OF THE OBJECTION, ORDER A REPLY BY THE
14 CONSERVATOR OR SET A HEARING ON THE OBJECTION. THE COURT MAY ALSO SET A
15 HEARING IN THE ABSENCE OF AN OBJECTION. FOLLOWING A REPLY OR HEARING, OR IN
16 THE ABSENCE OF AN OBJECTION AND HEARING, THE COURT SHALL APPROVE, DISAPPROVE
17 OR MODIFY THE PROPOSED BUDGET OR PROPOSED AMENDMENT TO SERVE THE PROTECTED
18 PERSON'S BEST INTEREST. AT A HEARING, THE CONSERVATOR HAS THE BURDEN TO
19 PROVE THAT A CONTESTED BUDGET ITEM IS REASONABLE, NECESSARY AND IN THE BEST
20 INTEREST OF THE PROTECTED PERSON.

21 F. IF THE COURT FINDS IT IS IN THE BEST INTEREST OF THE PROTECTED
22 PERSON, THE COURT SHALL IMPOSE RESTRICTIONS ON THE POWERS, DUTIES AND
23 EXPENDITURES OF THE CONSERVATOR DURING ANY PERIOD BEFORE A PROPOSED BUDGET OR
24 PROPOSED AMENDMENT IS APPROVED.

25 G. IF THE COURT FINDS IT IS IN THE BEST INTEREST OF THE PROTECTED
26 PERSON, THE COURT MAY WAIVE THE REQUIREMENT FOR AN INITIAL OR SUBSEQUENT
27 OPERATING BUDGET.

28 Sec. 26. Section 14-5419, Arizona Revised Statutes, is amended to
29 read:

30 14-5419. Accounts; definition

31 A. Except as provided pursuant to subsection F of this section, every
32 conservator must account to the court for the administration of the estate
33 not less than annually on the anniversary date of qualifying as conservator
34 and also on resignation or ~~removal~~ SUBSTITUTION, and on termination of the
35 protected person's minority or disability, except that for good cause shown
36 on the application of an interested person, the court may relieve the
37 conservator of filing annual or other accounts by an order entered in the
38 minutes.

39 B. IF DURING THE PERIOD COVERED BY THE CONSERVATOR'S ACCOUNT THE
40 EXPENDITURES IN A CATEGORY EXCEED THE APPROVED BUDGET FOR THAT CATEGORY BY
41 MORE THAN THE THRESHOLD FOR AMENDMENT, THE EXPENDITURES IN EXCESS OF THE
42 THRESHOLD FOR AMENDMENT ARE PRESUMED NOT REASONABLE OR NECESSARY. IF THE
43 EXPENDITURES IN A CATEGORY DO NOT EXCEED THE APPROVED BUDGET FOR THAT
44 CATEGORY BY MORE THAN THE THRESHOLD FOR AMENDMENT, THE EXPENDITURES FOR THAT
45 CATEGORY ARE PRESUMED REASONABLE AND NECESSARY. THE PRESUMPTION PRESCRIBED

1 IN THIS SUBSECTION MAY BE REBUTTED BY A PREPONDERANCE OF THE EVIDENCE. FOR
2 THE PURPOSES OF THIS SUBSECTION, "THRESHOLD FOR AMENDMENT" MEANS TEN PER CENT
3 OF THE EXPENDITURE CATEGORY OR TWO THOUSAND DOLLARS, WHICHEVER IS GREATER,
4 UNLESS A DIFFERENT THRESHOLD IS SET BY THE COURT.

5 ~~B-~~ C. The court may take any appropriate action on filing of annual
6 or other accounts. In connection with any account, the court may require a
7 conservator to submit to a physical check of the estate in the conservator's
8 control, to be made in any manner the court may specify.

9 ~~C-~~ D. An adjudication allowing an intermediate or final account can
10 be made only on petition, notice and a hearing. Notice must be given to:

11 1. The protected person.

12 2. A guardian of the protected person if one has been appointed,
13 unless the same person is serving as both guardian and conservator.

14 3. If no guardian has been appointed or the same person is serving as
15 both guardian and conservator, a spouse or, if the spouse is the conservator,
16 there is no spouse or the spouse is incapacitated, a parent or an adult child
17 who is not serving as a conservator.

18 4. A representative appointed for the protected person, if the court
19 determines in accordance with section 14-1408 that representation of the
20 interest of the protected person would otherwise be inadequate.

21 ~~D-~~ E. An order, made on notice and a hearing, allowing an
22 intermediate account of a conservator, adjudicates as to the conservator's
23 liabilities concerning the matters considered in connection therewith. An
24 order, made on notice and a hearing, allowing a final account adjudicates as
25 to all previously unsettled liabilities of the conservator to the protected
26 person or the protected person's successors relating to the conservatorship.

27 ~~E-~~ F. In any case in which the estate consists, in whole or in part,
28 of benefits paid by the veterans administration to the conservator or the
29 conservator's predecessor for the benefit of the protected person, the
30 veterans administration office that has jurisdiction over the area is
31 entitled to a copy of any account filed under ~~chapter 5, article 4~~ of this
32 ~~title~~ ARTICLE. Each year in which an account is not filed with the court,
33 the conservator, if requested, shall submit an account to the appropriate
34 veterans administration office. If an account is not submitted as requested,
35 or if it is found unsatisfactory by the veterans administration, the court on
36 receipt of notice of the deficiency shall require the conservator to
37 immediately file an account with the court promptly.

38 ~~F-~~ G. Unless prohibited by order of the court, the conservator may
39 file with the court, in lieu of a final account, a verified statement stating
40 that:

41 1. The protected person has died. The conservator shall attach a
42 certified copy of the protected person's death certificate to the statement.

43 2. The protected person's successors have all waived in writing their
44 right to have the conservator submit to the court a final account of the
45 conservator's administration of the protected person's estate. The

1 conservator shall attach the originals of the written waivers to the
2 statement.

3 3. The conservator has delivered a copy of a closing statement to the
4 protected person's successors. The conservator shall attach a copy of the
5 closing statement to the statement.

6 ~~G~~ H. The closing statement that is to be delivered to the protected
7 person's successors shall be a verified statement stating the following:

8 1. The protected person has died and the date of the person's death.

9 2. The persons receiving the closing statement have a right to have
10 the conservator submit to the court a final account of the conservator's
11 administration of the protected person's estate.

12 3. If the person wishes to have the final accounting reviewed by the
13 court, the person should not sign a waiver that waives this right.

14 4. If all persons receiving the closing statement choose to waive the
15 right to have the conservator submit to the court a final account, the final
16 account will not be reviewed by the court.

17 5. A list of the property owned by the protected person, as of the
18 date of the protected person's death, is attached to the closing statement
19 and that the list states the fair market value of the property as of the date
20 of the protected person's death.

21 6. The conservator, by the closing statement, shall inform the
22 protected person's successors that if they waive court review of the
23 conservator's final account, the conservatorship will be terminated, the
24 conservator will be discharged from all liabilities relating to the
25 conservatorship, the bond or other security posted by the conservator will be
26 exonerated and any restrictions previously imposed on the assets of the
27 conservatorship will be lifted.

28 ~~H~~ I. The conservator shall file an affidavit with the court that
29 states that the closing statement was sent or delivered to the protected
30 person's successors on a date before the date that the protected person's
31 successors signed the written waiver.

32 ~~I~~ J. Unless proceedings are pending against the conservator, on the
33 filing of the statement described in subsection ~~F~~ G of this section and the
34 affidavit described in subsection ~~H~~ I of this section, the court shall enter
35 an order terminating the conservatorship, discharging the conservator from
36 all liabilities relating to the conservatorship, exonerating and releasing
37 any bond or other security posted by the conservator and releasing any
38 restrictions previously imposed on the assets of the conservatorship.

39 ~~J~~ K. For the purposes of this section, "protected person's
40 successors" means:

41 1. The personal representative of the protected person's estate if the
42 personal representative and the conservator are not the same person.

43 2. If the conservator and the personal representative of the protected
44 person's estate are the same person and if the protected person died
45 intestate, the protected person's heirs.

1 3. If the conservator and the personal representative of the protected
2 person's estate are the same person and if the protected person died testate,
3 the devisees under the protected person's will that has been admitted to
4 probate.

5 Sec. 27. Section 14-5652, Arizona Revised Statutes, is amended to
6 read:

7 14-5652. Attorneys; fiduciary duties

8 A. EXCEPT AS PRESCRIBED PURSUANT TO SECTION 14-1104 AND absent an
9 express agreement to the contrary, the performance by an attorney of legal
10 services for a fiduciary, settlor or testator does not by itself establish a
11 duty in contract or tort or otherwise to any third party. For the purposes of
12 this subsection, third party does not apply to the personal representative,
13 settlor or testator.

14 B. An attorney who acts as a personal representative or trustee shall
15 disclose to all adult persons who have an interest in the estate or trust the
16 names of any person who has an interest in that estate or trust to whom the
17 attorney is currently rendering or has in the past rendered legal services.
18 The attorney must make this disclosure in writing within a reasonable time
19 after learning that a client or former client has an interest in the estate
20 or trust. The representation of an interested person by that attorney is not
21 grounds for removing the attorney as the personal representative or trustee
22 unless the attorney is unable to perform the fiduciary duties as personal
23 representative or trustee without violating the attorney's ethical
24 responsibilities to the client or former client.

25 Sec. 28. Effective date

26 This act is effective from and after December 31, 2011.